

COMPETITION DEFENSE LAW

Title I: General Provisions

Title II: Anticompetitive practices

Chapter 1 Collusive practices

Chapter 2 Abuse of dominant position

Title III: Investigation procedure and penalizing anticompetitive practices

Chapter 1 Petition request

Chapter 2 Procedural activity

Chapter 3 Conclusion of the procedure and impugning proceedings

Chapter 4 Precautionary measures

Title IV: Eliminating and penalizing anticompetitive practices

Chapter 1 Sanctions and corrective measures

Chapter 2 Coercive fines

Title V: Control of business concentrations

Chapter 1 General norms

Chapter 2 Evaluation procedure and business concentration authorization

Chapter 3 Infraction and sanction regime

Chapter 4 Impugning measures

Title VI: Competent bodies

Title VII: Penal action

Modificatory Disposition

Transitory Disposition

Final Provisions

TITLE I
GENERAL PROVISIONS

Article 1.- Purpose of the Law.-

The Law prohibits and penalizes anticompetitive practices, controls and corrects anticompetitive business concentrations, with the purpose of fostering economic efficiency in the markets and thus obtaining the greater well-being of consumers.

Article 2.- Scope of subjective application.-

The Law is applicable to all natural and juridical persons, profit or non-profit, private, or public, who develop economic activity or whose associates or affiliates do.

Those persons exercising the direction or representation of juridical persons comprised within the scope of application of the Law are solidarily responsible of the acts and/or anticompetitive conducts in which they may incur.

Article 3.- Scope of territorial application.-

The Law is applicable to any practice and/or anticompetitive practice, and to those business concentration acts that may produce effects in all or part of the national territory, independently of their place of origin.

Article 4.-Pre-eminence of reality.-

In applying Law, determination of the real nature of the acts or conducts, shall consider those situations and economic relations actually carried out, pursued or established.

TITLE II
ANTICOMPETITIVE PRACTICES

Chapter I
Collusive practices

Article 5.- General prohibition of collusive practices.-

All agreements, decisions or recommendations of business or professional associations, and concerted practices whichever form they may adopt, that may cause to limit, restrict, falsify or distort competition, and are undertaken affecting all or part of the national market, are forbidden and shall be sanctioned.

The practices and/or prohibited conducts may consist enunciatively, and as an example, in:

- a) Agreeing directly or indirectly the fixing of prices or other commercial conditions or services.
- b) Limiting or agreeing concertedly the control of production, distribution, technical development or investments
- c) Dividing the market or sources of supply
- d) Agreeing product quality when it is not conforming to national or international technical standards and negatively affect consumers.
- e) Applying in business relationships, unequal conditions for equivalent services that may put some competitors in disadvantage facing others. Discounts and bonuses corresponding to generally accepted commercial practices, that are given or granted on certain compensatory circumstances, such as payment in

advance, amount, volume, or others given in cases when conditions are the same, are not considered as practices restrictive of free competition.

- f) The subordination of signing contracts to the acceptance of supplementary services that by their nature or in accordance with mercantile uses have no relation with the purpose of those contracts.
- g) The unjustified and concerted refusal to satisfy the demands for purchase or acquisition, or the offers for selling or providing products or services.
- h) The boycott designed to limit access to the market or the free exercise of competition by other companies.
- i) The establishment, agreement or coordination of biddings, or abstention in bids, tenders, or other means for contracting, or public acquisition provided in the applicable legislation, as well as public auctions and sales.
- j) Signing unjustifiably, exclusivity distribution or sales contracts. .
- k) Fixing unjustifiably and concertedly resale prices.

The acts forbidden by this article are null in plain right.

Article 6.- Exemptions.-

The agreements, decisions and concerted practices provided in article 5 of the Law, that contribute to improve the production or distribution of products or to promote technical or economic progress, while reserving for consumes and equitable participation in the resulting benefit, are not forbidden, without need for a previous decision, whenever:

- a) the conduct is essential to reach the beneficial purposes, mentioned in the introduction of the present article; and,
- b) The conduct does not indirectly turn into a way of facilitating the companies involved to eliminate competition with regard to a substantial part of the market in which they participate.

Article 7.- Proof responsibility.-

The Commission has the responsibility of proving the fulfillment of the conducts typified in article 5 of the present Law, its enforcement and anticompetitive effects in the national market.

The persons who invoke the protection of exemptions in article 6 of the Law, must bring evidence that the concurrent conditions provided in the mentioned article are complied with.

Despite the provided in the previous paragraph, the Commission may verify, -ex-officio - the compliance with the concurrent conditions provided in article 6 of the Law.

Article 8.- Inconsequential conducts.-

The Commission may decide not to initiate or acquit the proceedings provided in the Law regarding collusive practices that because of their slight importance are not capable of affecting competition significantly.

Chapter II

Abuse of dominant position

Article 9.- Dominant position in the market.-

It is understood that one or more companies enjoy dominant position in the market, when they can act independently regardless of their competitors, buyers, clients, or providers, due to factors such as the significant participation of the companies in their respective markets, the characteristics of supply and demand of the products

or services, the technological development or involved services, the activity's legal framework, competitors' access to financing sources and supply, as well as distribution networks.

To establish the existence of dominant position in the market, the following circumstances must be considered, among others:

- a) The degree in which the good or service is substitutable for others, the conditions of said substitution and the time required for it.
- b) The degree in which the legal restrictions limit competitors' access to the market, or providers' access to alternative clients.
- c) The degree in which the presumed responsible may unilaterally influence in the construction of prices or restrict supply or demand in the market, and the degree in which its competitors can offset said power.

Article 10.- Abuse of dominant position in the market.-

The abuse by one or more companies of their dominant position in the market is forbidden and shall be sanctioned In conformity with the norms of the Law.

Abuse of dominant position in the market may particularly consist in:

- a) Fixing predatory prices to eliminate competitors.
- b) The implementation of exploitative practices. This modality shall be applicable only in those cases in which concurrently existing high barriers to access the market, a monopoly, and the absence of economic regulation, in such way that the consumers' freedom of choice is severely affected. In no case shall this modality be applied in competitive markets.
- c) Limiting the production, distribution or the technical development in prejudice to consumers.

- d) The unjustified refusal to satisfy the demands for purchase or acquisition, or the offers for selling or providing goods or services.
- e) Applying in commercial or service relations, unequal conditions for equivalent services, which put some competitors in disadvantage facing others, including those located in different markets. Granting discounts and bonuses corresponding to generally accepted commercial practices, given or granted in certain compensatory circumstances, such as, advance payments, amount, volume, or other in general, do not constitute an abuse of dominant position in all cases where equal conditions exist.
- f) Subordinating the signing of a contract to the acceptance of supplementary services, which by their nature or in accordance to commercial uses have no consistency with the purpose of said contracts.
- g) Refusing another company the access to its own networks or other infrastructure in exchange for a reasonable remuneration whenever these networks or facilities represent an essential facility and there is no regulating organism in said market.
- h) Signing unjustified exclusive distribution or exclusive sales contracts.
- i) Unjustifiably fixing resale prices.

The prohibition shall also be applied to those cases in which the dominant position of one or several companies in the market has been established by legal provision.

TITLE III

INVESTIGATION PROCEDURE AND SANCTION OF ANTICOMPETITIVE PRACTICES

Chapter I

Procedure request

Article 11.- Investigation Procedure forms.-

The sanctioning procedure for infringements to the provisions of the Law is always initiated officially, by own initiative or as consequence of superior order, petition motivated by other bodies, entities or by denunciation.

Article 12.- Denunciation requisites.-

The denunciation regarding conducts or practices sanctioned by Law must contain:

- a) Name, denomination, or trade name of the denouncer, address, and corresponding powers if it were the case.
- b) Evidence accrediting the existence of reasonable evidence of the commission of the anticompetitive conduct or practice, if possible.
- c) Identification of the presumed guilty, if possible.
- d) Payment voucher for proceeding rights. Said rate can be exempted from the provided in article 45.1 of the General Administrative Procedure Law through Supreme Decree approving the entities' TUPA (Single Administrative Procedures Text).

Article 13.- Actions prior to the admission to proceedings.-

Once the denunciation is presented, and prior to the resolution of admission to proceedings, the Technical Secretariat may start previous actions to gather information and/or to identify reasonable evidence on the existence of anticompetitive behavior.

These previous actions will take place in a period of no more that thirty- (30) - working days.

The Commission will only accord the initiation of the proceedings if there is reasonable evidence of the existence of an anticompetitive conduct. The decision denying the initiation of proceedings is appeal able, in a period of fifteen (15) working days.

The resolution for initiation of the procedure shall have the following minimum information:

- a) Identification of the person or persons presumed responsible.
- b) Succinct exposition of the facts motivating the establishment of the procedure, possible qualification and, in its case, the sanctions that might fall to.
- c) Competent body for the resolution of the case, indicating the norm attributing such competence.
- d) Precautionary measures, if it were the case.
- e) Indication of the right to make allegations and the terms for their exercise.

La resolution initiating the procedure will be notified to the defendant, as well as to the persons who have accredited their participation in the procedure.

Once admitted the denunciation, the Commission shall order the publication of a succinct note on its purpose, so any third party may provide information, within no more than fifteen (15) working days. The note may be published in the Official Gazette, and in its case, in any other means of communication that guarantees enough dissemination of the initiated procedure.

Chapter II

Procedural activity

Article 14.- Answering period.-

The defendant or defendants must answer the imputed charges within thirty - (30) working -days, offering the corresponding evidence.

During the abovementioned period, third parties with a legitimate interest may present themselves at the procedure, expressing their arguments and offering relevant evidence prior fulfillment of the requisites to formulate a denunciation.

Article 15.- Access to the proceedings and allegations.-

1. At any time during the procedure, those interested have the right to be acquainted with the state of the proceedings, and have access to copies of the documents in it, if the Commission has not approved reserve and/or confidentiality, through petition or to not hinder the purpose of the procedure.
2. At any time, those interested may also adduce allegations that will be taken into consideration by the instructor body in the procedure.

Article 16.- Trial period.-

1. The trial period shall be of ninety- (90) - working- days, counted from the expiration of the answering period. This period may once and for the same period of time.
2. The parties offering them must finance the evidence.

3. The facts verified by functionaries, acknowledged as authorities, and are formalized in public document observing the pertinent legal requisites shall have probatory value, without prejudice to the evidence, which in defense of their rights or interests, the interested may contribute.

Article 17.- Instruction actions.-

The Technical Secretariat is obligated, in reason to its competence, to perform officially, as many actions as needed for examination of facts, gathering the documents, information, or objects relevant to determine, in its case, the existence of administrative infraction.

If, as a consequence of the procedure's instruction, the initial determination of the facts were modified, of its possible qualification or the sanctions to be imposed, the instructor shall propose to the Commission the correspondent amendment, which, if accepted, must be notified to the defendant and persons who have accredited their participation in the procedure.

Article 18.- Report of the Technical Secretariat.-

The Technical Secretariat shall issue a report within no more than thirty (30) working days counted from the due date of the trial period, informing the following:

- a) Proven facts
- b) Determination of the administrative infraction
- c) Identification of those responsible
- d) Proposal for graduating the sanction
- e) Proposal of the pertinent corrective measures

In case the Technical Secretariat should not find evidence of the existence of the practice and/or anticompetitive conduct, it will propose to the Commission a declaration of non-existence of administrative infraction.

The report shall be notified to the parties, who will count with a period of thirty (30) working days to present their allegations. Within the same period, the parties who consider it convenient may request from the Commission a Hearing to sustain their allegations against the Technical Secretariat's report orally.

Once the time to present allegations has expired, the Technical Secretariat shall have five (5) working days to notify the Commission of the actuated in the proceedings, the report, allegations of the parties with respect to the report, and if it were the case, the request or requests formulated for a hearing.

Article 19.- Exoneration of liability.-

In an open procedure for infraction of the Law, any person may request, the instruction body to be exonerated of his liability in exchange for providing evidence that contribute to identify and demonstrate the existence of an anticompetitive conduct or practice. If such elements are deemed to be determining to sanction the responsible, the Technical Secretariat may propose, and the Commission can accept the approval of this offer.

To this end, the instruction body counts with all the necessary negotiation powers to establish the terms of the offer.

The agreement on discharge from liability shall be signed between the interested party and the instruction body, and may include the obligation to keep the origin of the evidence confidential if the Commission had agreed so and the nature of the evidence would permit it. The non-compliance with confidentiality will generate for

the functionary the penal and administrative liabilities provided in similar way for the case of breach of confidential information. The signing of this agreement and the compliance of the agreed by the interested party exonerates him from any liability, and neither the Commission nor any authority bring an action or initiate proceedings for the same actions.

If several persons request exoneration from liability, the Technical Secretariat will admit the petition that being formulated in the first place is indicative of contributing important evidence for the sanction of the practice and/or anticompetitive conduct.

Chapter III

Conclusion of the procedure and impugnation procedures

Article 20.- The Commission's decision.-

Once the probatory stage has been concluded and the parties' allegations received, or the term provided expired, the Commission will have a period of thirty (30) working days to emit a final decision in the proceeding. Within such term, and if it were requested, the Commission will summon an oral hearing, in case it deems it necessary to have more elements of judgment to resolve.

The Commission's decision shall be motivated and shall decide any question derived from the case. The parties involved cannot be attributed liability in the resolution, for actions not adequately imputed during the instruction phase.

The resolutions will be notified in a term of no more than five (5) working days from the date of expedition.

Article 21.- Implementation of the final decision.-

Filing remedy of appeal will not suspend the implementation of the impugned action, except the sanctions imposed by the Commission, which will not be enforced until the Tribunal resolves the corresponding remedy of appeal, or until the time for its filing is due without it being determined.

Article 22.- Time prescription for infringement.-

Infringements to the Law will prescribe after five (5) years of the occurrence of the last infringing conduct or practice.

Time prescription will be interrupted by any action by the Commission or instructive body with respect to the investigation of the infringement that is made known to the alleged responsible.

Article 23.- Remedy of appeal.-

1. The Commission's decision can be appealed to the Tribunal by the violators and persons who prove their participation in the procedure within fifteen (15) working days. The appellants have the right to present written reports and new evidence to the Tribunal.
2. Likewise, the following actions are appealable to the Tribunal, within fifteen (15) working days:
 - a) Those determining the impossibility of continuing a procedure.
 - b) Those producing defenselessness or irreparable prejudice to legitimate rights or interests.
3. There is no remedy of appeal against the Commission's acts and resolutions

Article 24.- Filing remedy of appeal.-

The appeal shall be presented to the Commission who will remit it to the Tribunal with the file, once verified it meets all the legal requisites, within fifteen (15) working days. Facing the declaration of inadmissibility or invalidity of the appeal, a complaint appeal may be filed to the Tribunal.

Article 25.- Procedures for remedy of appeal.-

1. The Tribunal will notify the parties, fifteen (15) days after the reception of the file, its arrival, and the initiation of the appeal procedures.
2. The appellants can present the allegations, documents and justifications they deem pertinent, fifteen (15) days after the abovementioned notification.
3. Once the time for presentation of allegations is due, the Tribunal counts with a term of thirty (30) days to own its own initiative or upon request by the parties, decide on the opening of the trial stage procedure.
4. The trial stage must not exceed thirty (30) working days, extendable once, and for the same period of time, counted from the decision of opening
5. At any time during the proceedings, the Tribunal can request from the Commission the emission of a report on the questions appearing in the file, which will be evacuated in a maximum of ten (10) working days.

Article 26.- Tribunal's Decision.-

1. The Tribunal shall have thirty (30) working days, extendable once and for the same time, counted from the expiration of presentation of allegations or the trial period, as is the case, to issue a decision. Within the time provided herein, the Tribunal will summons the parties, to submit their final allegations, if they should have had requested in an oral hearing. The

Tribunal may summon ex-officio to oral report, in case it deems necessary to have more elements of judgment to resolve.

2. The Tribunal shall resolve all the questions presented in the proceedings, with full faculties in the valuation of the forbidden actions and conducts.
3. The Tribunal's resolution may not pretend the imposition of serious sanctions for the violator being sanctioned, when he appeals or impugns the Commission's decision.

Article 27.- Appeals against the Tribunal's decision.-

The Tribunal's final decisions exhaust administrative procedures. Filing appeals is not permitted in administrative proceedings, and only a contentious-administrative demand may be filed in the terms provided in the legislation for that matter.

Chapter IV Precautionary Measures

Article 28.- Precautionary measures.-

Before initiating a sanctioning procedure, or at any stage of the proceedings, the Commission may officially, or upon petition of one of the parties, issue precautionary measures destined to ensure the efficacy of the final decision.

The Commission may adopt the generic or specific precautionary measure deemed pertinent, especially the discontinuance of activities, obligation to deal, imposition of conditions, suspension of the juridical acts' effects, adoption of positive behaviors, and others that may contribute to preserve the affected competition, and prevent the damages likely to be caused by the conduct object of the proceedings.

Precautionary measures must adjust to the intensity, proportion, and needs of the objectives to be guaranteed.

Whenever the precautionary measure is granted upon petition of a party, before initiating a sanctioning procedure, such measure will expire if a demand is not presented within thirty (30) working days of its notification

When dealing with party petitions, the Commission can accept or deny them in a period of no more than thirty (30) working days, extendable once, and for the same extent. Civil ensurance measures like counter precaution or similar may not be demanded of the petitioner.

At any time during the proceedings, officially or upon party petition, the suspension, amendment, or annulment of the precautionary methods may be agreed.

Decisions imposing precautionary measures are appealable to the Tribunal within a period of fifteen (15) working days. The appeal of precautionary measures will be granted without suspension effects, proceeding in different docket. The Tribunal will pronounce on the appeal in no more than thirty (30) working days, extendable once and for the same time extent.

The Tribunal has the same powers attributed to the Commission for the issuing of precautionary measures.

TITLE IV

ELIMINATION AND SANCTION OF ANTICOMPETITIVE PRACTICES

Chapter I

Sanctions and Corrective Measures

Article 29.- Imposition of sanctions.-

Infringements to the provisions of the Law shall be sanctioned by the Commission, upon the basis of ImpositiveTax Units (UIT), with the following fines:

- a) If the infringement were graded as light, a fine of up to five-hundred (500)UITs, provided it does not exceed eight percent (8%) of the gross sales or income received by the violator, respect to all his economic activities, corresponding to the immediate fiscal year previous to the decision.
- b) If the infringement were graded as serious, a fine from five-hundred (500) UITs up to one-thousand (1 000) UITs, provided it does not exceed ten percent (10%) of the gross sales or income received by the violator, respect to all his economic activities, corresponding to the immediate fiscal year previous to the Commission's decision.

In case professional associations, business guilds, or natural or juridical persons had just initiated their economic activities after January 01 of the preceding fiscal year, the fine may not exceed, in any case, one thousand (1000) UITs.

In case of recidivism, the Commission may duplicate the fines imposed increasing them successively and unlimitedly.

To estimate the amount of the fines to be imposed according to the Law, the UIT in force on the date of effective payment shall be used.

The Commission may sanction each of the legal representatives or persons composing the directive or administrative bodies of the entities or companies incurring in anticompetitive practices and /or conducts, according to their degree of

participation or intervention in the determination or execution of the violating practice or conduct, with a fine of up to one-hundred (100) UITs.

Article 30.- Grading of sanctions.-

The Commission, to determine the degree of the infraction and the application of the corresponding fines, among others, will take into account the following criteria:

- a) The modality and scope of the competition restriction.
- b) The dimension of the market being affected.
- c) The market share of the company involved.
- d) The effect of the competition restriction, upon actual or potential competitors, on other elements of the economic process, and upon consumers and users.
- e) The duration of the restriction on competition.
- f) Recurrence of the forbidden conducts.

Article 31.- Prescription of the sanction.-

The action to demand compliance of the sanctions prescribes within five (5) years, counted from the day following the date in which the decision imposing the sanction came into effect.

Prescription of the sanction shall be interrupted, if the initiation of the execution process is made with the knowledge of the interested party, and the period will start running if it has been stalled for more than one month, by causes not imputable to the violator.

Article 32.- Corrective measures.-

Without prejudice of the sanction being imposed pot infringement of the Law, the Commission may issue corrective measures conducive to reestablish the competitive process, which may consist, among others, in:

- a) The cessation or realization of activities, even under certain conditions.
- b) The obligation to deal, even under certain conditions.
- c) The inefficacy of anticompetitive clauses or provisions of juridical acts.
- d) Access to systems, networks, associations, or services decisive for competition, even under certain conditions.

Exceptionally, when the imposition of fines were not sufficient to correct the implementation of exploitative practices, the Commission may issue structural, corrective measures, such as ordering the division or reorganization of a company, or selling part of its assets.

Structural remedies may only be imposed in absence of other behavior remedies with equivalent efficiency, or when in spite of the existence of behavior remedies, these are more burdensome for the one forced to comply than the structural remedy.

Article 33.- Compensation for damage or loss.-

Anyone damaged by the conducts, agreements, contracts, or practices declared to be anticompetitive by the Commission, or the Tribunal, may demand before the Judiciary, the civil pretension of compensation for damage or loss against those who have participated in the creation and/or execution of the anticompetitive conduct infringing the Law.

Whoever has been falsely accused, with deceit and negligence, may also exercise such action.

Chapter II

Coercive fines

Article 34.- Coercive fines for non-compliance with precautionary measure.-

If the party required to comply with a precautionary measure ordered by the Commission, does not meet, a coercive fine of no less than ten (10) nor greater than one-hundred (100) UITs, shall be automatically imposed on him. The corresponding fine must be paid within a period of five working days, after which, its coercive collection will be arranged for.

In case the noncompliance hereinabove persists, the Commission may impose a new fine, doubling successively and unlimitedly the amount of the last fine imposed, until the precautionary measure is complied with. The coercive fines imposed, not being a sanction in nature, do not prevent the Commission from imposing a sanction at the end of the proceeding.

Article 35.- Coercive fines for noncompliance with corrective measures.-

If the party obliged to comply with a corrective measure does not meet, a coercive fine of no less than ten (10) or greater than one-hundred (100) UITs, shall be automatically imposed on him. The corresponding fine must be paid within a period of five working days, after which, its coercive collection will be arranged for.

In case the noncompliance hereinabove persists, the Commission may impose a new fine, doubling successively and unlimitedly the amount of the last fine imposed, until the precautionary measure is complied with. The coercive fines imposed are not a sanction.

TITLE V
BUSINESS CONCENTRATION CONTROL

Chapter I
General Rules

Article 36.- Concentrations subject to the Law.-

All horizontal or vertical business concentrations, which develop in any economic activity sphere, are subject to the provisions of the Law, when one of the following conditions is given:

- a) That as a consequence of the operation it acquires or increases a market share similar or superior to twenty-five percent (25%) in any of the relevant markets in Peru, when the global sales volume in Peru of the group of participants in the operation surpasses in the last fiscal year the amount of 100 000 UIT –one- hundred -thousand Impositive Tax Units-.
- b) That the market participation, individual or jointly, of the companies participating in the operation is similar or superior to seventy percent (70%) in any relevant market in Peru, independently of the total income of those companies.

Without prejudice of the provisions in this article, the total income and market participation of the economic group involved in the operation shall be considered.

Article 37.- Effects upon the national territory.-

All those operations, which despite being developed abroad, involve directly or indirectly companies that develop economic activity in Peru, are included in the Law.

Article 38.- Business concentration actions.-

1. It is understood by business concentration any economic operation that entails a stable amendment of the control structure of the participating companies, any of them, or through them, among other operations:
 - a) The merger of two or more companies previously independent.
 - b) The take-over of one company or companies, through any means or juridical business.
 - c) The creation of a joint venture or the acquisition of joint control over a company provided it carries out, in a permanent way, the functions of an independent economic entity, and does not have as object or permanent effect to coordinate the competitive behavior of companies that keep on being independent.

2. Control exists when you can exercise a decisive influence on the activities of a company, resulting from the titularity of rights, contracts or other means. Particularly, it is understood control exists when it has:
 - a) Property or use rights over all or part of a company's assets; or,
 - b) Rights or contracts that allow influencing decisively over the composition, deliberations, or decisions of a company's bodies.

3. No concentration operation subject to Law is produced when credit entities or other finance or insurance entities, whose normal activity is the negotiation and transaction of titles, on its own, or for others, and who hold temporarily, shares acquired from a company with the object of reselling them, provided they do not exercise the power to vote inherent to those

shares with the purpose of determining the competitive behavior of said company.

Article 39.- Authorized concentrations.-

1. The Commission will authorize those concentrations that do not hinder the continuance of an effective competition in the market. To these purpose, the following circumstances must be considered:
 - a) Structure of the relevant market.
 - b) Choice possibilities for providers, distributors, consumers, and users.
 - c) The economic and financial power of the companies.
 - d) The evolution of supply and demand.
 - e) Exterior competition.

2. Despite the provided in the previous numeral, those concentrations entailing restrictive effects on competition may be authorized if the Commission considers those effects are compensated by their contribution to the achievement of efficiencies such as:
 - a) Improvement of production or commercialization systems.
 - b) Fostering technical or economic progress.
 - c) Improvement of industry competitiveness.
 - d) Contribution to consumers' interests.

Article 40.- Inefficacy of anticompetitive concentrations.-

Business concentrations will produce no effects, nor can they be executed without the Commission's authorization.

Economic concentrations subject to Law and commercial operations derived from them, whose execution is intended without complying with previous notification to the Commission, are inefficient.

Either the Commission or the Tribunal shall order the disconcentration, partial or total of whatever has been unduly concentrated, termination of control or suppression of actions, as corresponds, adopting measures, and impelling actions annulling the concentration act carried out without authorization.

Either the Commission or the Tribunal shall revoke the decision by which the concentration operation was approved when the information contributed by the petitioner is false or when it has been given altering its real values. In the same manner, the authorization will be annulled when the parties involved do not with the conditions imposed upon them.

Chapter II

Procedure for the evaluation and authorization of business concentrations

Article 41.- Concentration notification.-

The concentration included in the field of application of the Law must be notified to the Commission within a maximum of seven (7) working days, counted from the date of conclusion of the contract or agreement, the authorization of the public tender by the stock market authority, or the acquisition of one controlling share. The seven-day (7) period shall start counting when any of the events mentioned is produced first.

The participating companies must notify concentration operations consisting in a merger or the constitution of a joint control, jointly. In all other cases, the

notification corresponds to the person or company acquiring control over one or more companies.

Article 42.- Contents of the notification.-

1. The notification shall contain the necessary information in order to appreciate the nature and effects of the operation. The notification must unavoidably include the following documents:
 - a) Copy of the general balance, profit and loss balance, changes in net patrimony and cash flow, corresponding to the three last fiscal years of the companies participating in the concentration.
 - b) Copy of the documents accrediting the contract, agreement or acquisition of rights giving place to the concentration operation, with the amendments, if it were the case, they had suffered after its signing.
 - c) Proof of payment of the fee for analysis and study of the concentration operations, article 47 of the Law refers to.
2. When concentration takes place through a public bid to acquire shares in the stock market, once the negotiation offer is authorized by the stock market, no advertising shall be published; neither shall the acceptance period begin before the Commission's authorization is obtained.
3. Companies may request confidentiality on certain information regarding the planned concentration to be declared confidential

The Technical Secretariat may ask the bidding companies to present additional information with regard to the notified operation.

Article 43.- Period for formal verification of the notice.-

Within fifteen (15) working days following the notification, the Commission must issue decision, confirming whether the operation is subject to the Law's provisions, in case the Commission declares the operation is subject to the provisions of the Law; it must also declare the sufficiency or insufficiency of the documentation provided.

If the Commission declares information insufficient, it will grant the petitioners fifteen (15) additional working days to complete said information, under penalty of not considering it submitted. Within fifteen (15) working days following the presentation of the supplementary information, the Commission must emit decision on its sufficiency or insufficiency.

If the Commission declares information sufficient, the time provided in the following article will start running.

Omitting pronouncement at the expiration of the established time will give place to understand as sufficient the information presented, and for the time provided in the following article to start counting.

Article 44.- Evaluation of the concentration operation.-

Once declared the information sufficiency, or the period of fifteen (15) working days expired, without the Commission's pronouncement, a Sixty(60) working days period will be initiated, during which, the Commission will evaluate whether the operation is compatible with effective competition. During this period, the Commission may request the petitioner, as well as third parties participating in the markets, who are affected by the concentration operation, more information.

At the expiration of the Sixty-day period (60) working days, the Commission must approve the request or emit a resolution for continuing the evaluation. The

omission of the Commission's pronouncement at the expiration of this term shall give place to the tacit approval of the request, being the concentration automatically authorized.

The resolution deciding to continue with the evaluation must be motivated and must be notified to the petitioners.

The companies may request from the Commission, certification of their request for evaluation of the concentration, as well as a period of Sixty (60) working days counted from the date it was admitted. The Commission under liability must issue the certification, stating that pursuant to the provided in this article, the concentration has been approved.

Article 45.- Additional evaluation period.-

In those cases where the complexity of the operation or of the information presented merits an exhaustive analysis of the effects of the concentration in the market or markets affected, the Commission may extend the period for its decision for ninety (90) additional working days.

During this period, the Commission may request more information to the companies involved in the concentration operation as well as to other agents or authorities, as they deem pertinent.

Expired the period, the automatic authorization mentioned above will proceed.

Article 46.- Actions during the evaluation.-

During the evaluation process, the companies may request hearings and present the documents they deem pertinent to their pretension. Likewise, they must inform

on the substantial amendments of the concentration operation and they may propose voluntary amendments to the provision or use of assets to facilitate their authorization by the Commission.

Similarly, the companies may propose to the Commission uninvestment projects to adequate the operation to an effective competition.

Article 47.- Administrative fees.-

The notification of an economic concentration operation shall be subject to an administrative fee equivalent to 0,1% of the total value of the operation to a maximum value of 50 UIT.

Article 48.- Contents of the decision.-

The Commission must emit pronouncement on the operation, adopting in a motivated way, one of the following decisions:

- a) Authorizing the concentration operation.
- b) Authorizing the concentration subordinating it to the compliance of conditions compensating for the restrictive effects on competition. Said conditions may consist among others, in the obligation to transfer certain businesses or assets or in the imposition of restrictions.
- c) Denying the concentration operation because of its anticompetitive effects.

In case the request were denied, the companies may recommend, in a maximum period of fifteen (15) working days, counted from the notification of the final decision, new commitments, which must be accepted or refused by the Commission in a maximum of fifteen (15) working days.

Chapter III
Infringement and sanction regime

Article 49.- Infringements and sanctions.-

1. The noncompliance with the obligation to notify constitutes serious sanctionable infringement in accordance to the provided in article 19 of the Law.
2. The execution of the operation without previous authorization or not complying with the conditions imposed by the Commission constitutes serious sanctionable infringement in accordance to the provided in article 29 of the Law.
3. Giving false information or submitting information altering real values, constitutes a very serious punishable infringement in accordance to the provided in article 29 of the Law.

Article 50.- Coercive fines.-

1. The Commission or the Tribunal, through resolution, may impose upon the companies involved in concentration processes regulated by Law, coercive fines for an amount of no less than one (1) UIT nor more than ten (10) UIT per day delayed, counting from the date established in the warning resolution, in order to force them to carry out the following conducts.
 - a) To submit the precise and complete information the Commission or the Tribunal had requested;

- b) To implement the measures or comply with the conditions ordered through a resolution.
2. The coercive fines imposed, not being sanctions by nature, do not impede the Commission nor the Tribunal from imposing the sanctions provided in article 49 of the Law.

Chapter IV

Impugning means

Article 51.- Remedy of appeal.-

1. The resolutions dictated by the Commission in application of this Title, can be appealed before the Tribunal, in a period of fifteen (15) working days. The recourse must meet the following admissibility and legal basis requisites.
2. Once the case is appealed to the Tribunal, a term of Sixty (60) days will be initiated, during which the arguments presented in the appeal shall be evaluated. During this period the Tribunal may request more information if it deems it pertinent.
3. During the appeal's proceedings, the companies may request hearings and present arguments they deem pertinent to their pretension. Likewise, they must inform on substantial amendments of the concentration operation and may suggest voluntary amendments to the provision or use of assets to facilitate their authorization by the Tribunal.
4. The provisions for the General Administrative Procedure Law shall be applied supplementally to whatever is not regulated in this Title.

Article 52.- Exhaustion of the Administrative procedure.-

Recourse does not exist in administrative procedure and only a contentious-administrative procedure may be filed, in the terms fixed in the legislation on the matter.

TÍTULO VI COMPETENT BODIES

Article 53.- The Commission.-

The Free Competition Commission of INDECOPI is the functional body in charge of the enforcement of the Law, with exclusive competence.

Attributions of the Commission are:

- a) To control and sanction anticompetitive conducts and anticompetitive business concentration acts.
- b) To issue precautionary measures.
- c) To issue corrective measures with regard to anticompetitive conducts and/or practices and anticompetitive business concentration acts.
- d) To issue lineaments on the correct interpretation of the Law's norms.
- e) Others appointed by the legal provisions in force.

Article 54.- The Technical Secretariat.-

The Technical Secretariat of the Commission is the competent body for the procedures on anticompetitive conducts and in charge of supporting the Commission's performance in the emission of opinions on business concentrations.

Attributions of the Technical Secretariat:

- a) Making inquiries and investigations, exercising the faculties and competences attributed by the laws to INDECOPI'S Commissions. Exceptionally, through Commission's previous agreement, it may immobilize for a period of no more than five (5) days, extendable to other five, books, files, documents, correspondence, and registries in general of the natural or juridical person investigated, making a copy of them. In similar circumstances, previous judicial order, withdraw from where they are, for a period of fifteen (15) days. The withdrawal request must be motivated and shall be resolved within twenty-four (24) hours by a Penal Judge, without transfer to the other party.
- b) Making studies and publishing reports.
- c) Preparing lineament proposals.
- d) Others, legal provisions in force stipulate.

Article 55.- The Tribunal.-

The Chamber for the Defense of Competition of INDECOPI is the functional body in charge of reviewing in second and last administrative instance the administrative acts emitted by the Commission.

Article 56.- Competent bodies for the estimation of participation in the market.-

In the case of economic concentrations produced in markets subject to the control of regulating bodies, estimation of their participation in the market will be carried out by the corresponding authorities. In all the other cases, the estimation of market participations will be done by companies participating in the operation, without prejudice of the posterior control by the Commission and the Tribunal.

TITLE VII
PENAL ACTION

Article 57.- Penal Denunciation.-

It is exclusive faculty of the Commission to file denunciation on crime of abuse of economic power to which Article 232 of the Penal Code refers to, against natural persons that might have been responsible for the implementation of collusive practices causing serious consequences to the general economic interest, whether executed by themselves or by the juridical persons over which they exercised individually or jointly, control, administration or representation.

If, in the final resolution, the competent authority decides the formulation of penal demand against certain natural persons, the mentioned authority will abstain from imposing administrative penalties to the mentioned persons.

AMENDING DISPOSITION

SOLE.- Amendment of the Penal Code.-

Substitute articles 232 and 241 of the Penal Code for the following texts:

*“**Article 232.-** Whoever, infringing the law, fulfils a collusive practice with regard to price-fixation, or other commercial or service conditions, market sharing of supply sources, or the limitation of production causing the execution of said practice a sensible prejudice upon the market, he shall be repressed with a penalty depriving of freedom, no less than three nor longer than six years, with one-hundred and eighty to three-hundred and Sixty-five days with fines and disqualification, in accordance to article 36, annexes 2 and 44.”*

“Article 241.- *Whoever carries out any of the following conducts in order to alter the prices resulting from free competition in bids, public tenders, or other selection processes for State purchases shall be repressed with deprivation of freedom of no less than three years nor longer than six years and a ninety-seven to one-hundred and twenty day-penalty, ,*

- 1. Requests or accepts presents or promises to avoid taking part in selection processes;*
- 2. Intends to drive bidders away through threats, presents, promises or any other artifice;*
- 3. Agrees or coordinates with others, the offers or abstentions to present orders in selection processes whose referential value is superior to ten-thousand (10 000) UITs.*

In these cases, additionally, the agent or company by him represented, will be imposed the suspension of the right to deal with the State for a period of no less than six years.

The penalty shall not be less than four nor more than eight years, if the crime to which numeral 3 of this article refers to is committed in bids, public tenders or other state purchase selection processes and the referential or base price surpasses the hundred-thousand (100 000) UITs”.

TRANSITORY PROVISION

SOLE.- Economic concentration operations in process.-

It is declared, that the provisions contained in Title V of the Law shall be applied to the concentration operations of companies in process, who until their date of entry into force, had not been finished or had not concentered. Concentrations comprised in this provision must be notified to the Commission within a period of thirty (30) days, from the date of the Law's legality.

FINAL PROVISIONS

FIRST.- References to this Law.-

References to the Law's norms will be made indicating the article number, followed by the mention "Competition Defense Law!"

SECOND.- Generic derogation.-

This is a public order law, and derogates any legal or administrative disposition, with similar or lesser rank, opposing or contradicting it.

THIRD.- Express derogation.-

The following norms are expressly derogated from the date this Law enters into force:

1. Legislative Decree N° 701, its modifying norms, complementary substitute, or ruling.
2. Law N° 26876 and its modification, complementary, substitute and ruling norms.

Fourth.- Exclusion of national economy sectors because of public interest reasons.-

The provisions of the Law may be declared inapplicable, temporary, or definite, for public interest reasons, temporary or definite or any other sector of national economy, through a norm having Law nature.

FIFTH- Competence Assignment in the Telecommunications System.-

The sanction for collusive practices and abuses of dominant position, will be in charge of the Supervisory Agency for Private Investment in Telecommunications, – OSIPTEL, in accordance to the provided in Article 36 Law N° 27336, Law for the Development and Functions of The Supervising Agency for Private Investment in Telecommunications -OSIPTEL.

OSIPTEL shall enforce the Law in the identification procedures of anticompetitive practices, except for the provisions regarding to the control of business concentrations.

SIXTH.- Validity.-

The Law will be in force ninety (90) after its publication in the Official Gazette El Peruano.