

AGREEMENT ON ANTITRUST COOPERATION BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND THE UNITED STATES FEDERAL TRADE COMMISSION, OF THE ONE PART, AND THE NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE PROTECTION OF INTELLECTUAL PROPERTY (INDECOPI) OF THE REPUBLIC OF PERU, OF THE OTHER PART

The United States Federal Trade Commission and the United States Department of Justice (together the “U.S. antitrust agencies”), of the one part, and the National Institute for the Defense of Competition and the Protection of Intellectual Property (“INDECOPI”) of the Republic of Peru, of the other part,

Having regard for the close economic relations and the cooperation between the Government of the United States of America and the Government of the Republic of Peru within the framework of the United States-Peru Trade Promotion Agreement, signed on April 12, 2006, and in particular to the commitment of the United States and Peru in Chapter 13 of that Agreement to cooperate in the area of competition policy,

Recognizing that cooperation and coordination in competition law enforcement activities between the U.S. antitrust agencies and INDECOPI may, in appropriate cases, result in a more effective resolution of their respective concerns than would be attained through independent action, and

Noting the commitment of the U.S. antitrust agencies and INDECOPI to give careful consideration to each other’s important interests in the application of their competition laws,

Have agreed as follows:

**ARTICLE I
PURPOSE AND DEFINITIONS**

1. The purpose of this Agreement is to promote cooperation, including cooperation in the enforcement of competition laws, and to ensure that the U.S. antitrust agencies and INDECOPI give careful consideration to each other’s important interests in the application of their competition laws.

2. For the purposes of this Agreement, the following terms shall have the following definitions:
 - (a) “Anticompetitive practice(s)” means any conduct or transaction that may be subject to penalties or other relief under the competition laws enforced by the U.S. antitrust agencies or INDECOPI;
 - (b) “Competition authority(ies)” means the U.S. antitrust agencies and INDECOPI;
 - (c) “Competition law(s)” means
 - (i) For INDECOPI, Legislative Decree 1034, the Law for the Suppression of Anticompetitive Conduct, published June 25, 2008, and any regulations that modify or complement it, as well as any amendments thereto.
 - (ii) For the U.S. antitrust agencies, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11), and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition, as well as any amendments thereto; and
 - (d) “Enforcement activity(ies)” means any investigation or proceeding conducted by the U.S. antitrust agencies or INDECOPI in relation to the competition laws they enforce.

ARTICLE II ENFORCEMENT COOPERATION

1. The U.S. antitrust agencies and INDECOPI agree that it is in their common interest to cooperate in the detection of anticompetitive practices and the enforcement of their competition laws, and to share information that will facilitate the effective application of those laws and promote better understanding of each other’s competition enforcement policies and activities, to the extent compatible with their respective laws and important interests, and within their reasonably available resources.
2. Nothing in this Agreement shall prevent the U.S. antitrust agencies or INDECOPI from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements, or practices applicable to them.

ARTICLE III
COORDINATION WITH REGARD TO RELATED MATTERS

1. Where one of the U.S. antitrust agencies and INDECOPI are both pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.
2. In any coordination arrangement, each competition authority shall seek to conduct its enforcement activities consistently with the enforcement objectives of the other competition authority.

ARTICLE IV
AVOIDANCE OF CONFLICTS; CONSULTATIONS

1. The U.S. antitrust agencies and INDECOPI shall, within the framework of their own laws and to the extent compatible with their important interests, give careful consideration to the important interests of the other country's competition authority throughout all phases of their enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding, and the nature of the remedies or penalties sought in each case.
2. A competition authority of either country may request consultations with its counterpart in the other country regarding any matter relating to this Agreement. The request for consultations shall indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each competition authority shall consult promptly when so requested, with a view to reaching a conclusion that is consistent with the purpose of this Agreement.

ARTICLE V
TECHNICAL COOPERATION

The U.S. antitrust agencies and INDECOPI agree that it is in their common interest to work together on technical assistance initiatives related to competition law enforcement and policy. Subject to the competition authorities' reasonably available resources, these initiatives may include such forms of technical cooperation as the competition authorities decide are appropriate for purposes of this Agreement.

**ARTICLE VI
MEETINGS OF COMPETITION AUTHORITIES**

Representatives of each country's competition authorities shall meet periodically to exchange information with the other country's competition authorities on their current enforcement efforts and priorities in relation to their competition laws.

**ARTICLE VII
CONFIDENTIALITY**

1. Notwithstanding any other provision of this Agreement, no country's competition authority is required to communicate information to the other country's competition authority or authorities if such communication is prohibited by the laws of the country of the competition authority possessing the information or if said country deems that it would be incompatible with that country's important interests.
2. Insofar as information is communicated between competition authorities under this Agreement, the recipient shall, to the extent consistent with any applicable domestic laws, maintain the confidentiality of any such information communicated to it in confidence. Each competition authority shall oppose, to the fullest extent possible consistent with applicable domestic laws, any application by a third party for disclosure of such confidential information.

**ARTICLE VIII
EXISTING LAWS**

Nothing in this Agreement shall require a competition authority to take any action, or to refrain from acting, in a manner that is inconsistent with the existing laws it enforces, or require any change in the laws it enforces.

**ARTICLE IX
COMMUNICATIONS UNDER THIS AGREEMENT**

Communications under this Agreement may be carried out by direct communication between the competition authorities of each country through appropriate means (including telephone, email, videoconference, or other methods) at the working or senior level.

ARTICLE X
ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force upon signature.
2. This Agreement shall remain in force for an indefinite period of time, unless one Party notifies the other Party in writing that it wishes to terminate the Agreement. In that case, the Agreement shall terminate 60 days after the date of such written notification.

Signed at Washington, on this _____ day of May, 2016, in the English and Spanish languages, both texts being equally authentic.

FOR THE U.S. ANTITRUST AGENCIES:

Edith Ramirez
Chairwoman
Federal Trade Commission

Renata B. Hesse
Principal Deputy Assistant Attorney General
Antitrust Division
Department of Justice

FOR THE NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND
THE PROTECTION OF INTELLECTUAL PROPERTY OF THE REPUBLIC OF PERU:

Hebert E. Tassano V.
Chairman of the Board of Directors
INDECOPI