

**LEGISLATIVE DECREE NO.1044**

THE PRESIDENT OF THE REPUBLIC

WHEREAS

In accordance with Article 104 of the Political Constitution of Peru, through Law No. 29157, which delegates to the Executive Authority the power to legislate on various subjects relating to the implementation of the Peru-United States of America Commercial Promotion Agreement, and with the support of economic competitiveness in order to benefit therefrom, published on December 20, 2007, the Congress of the Republic has delegated to the Executive Authority the power to legislate, *inter alia*, in order to obtain an improvement in the regulatory framework;

After more than 15 years of implementation of Legislative Decree No. 691 and Decree-Law No. 26122, the assessment made shows the need to unify said legal bodies in order to avoid the absence of clarity resulting from a dual system of rules, as well as a series of existing deficiencies and gaps in each of those bodies, thereby requiring comprehensive reform;

In that sense, the adoption of a new Law to Suppress Unfair Competition is relevant, a law which specifies its aim in accordance with the aim stated in the aforementioned Commercial Promotion Agreement; clarifies its scope (subjective, objective and territorial); highlights the prevailing nature of actual circumstances; establishes clear concepts and criteria for analysis which generate greater predictability in their application, when establishing the forms of conduct regarded as unfair, including where they have been carried out through commercial advertising; redefines and substantially improves the administrative procedure, incorporating reasonable periods, the preclusion of offering proof (but) without affecting the right of defense, better treatment of precautionary measures and a clearer distinction between the instructive and decision-making roles of the authority; provides the sanctions regime with greater deterrent capacity, by enhancing the criteria for establishing them, increasing the limit for cases of very serious infringements and developing the power of the competition authority to issue corrective measures; *inter alia*;

On the basis of said content, a new law which prohibits and sanctions acts of unfair competition, and also specific infringements of commercial advertising will strengthen substantially the regulatory framework for the defense of fair competition, which in turn will provide an incentive for economic efficiency in the national market, promote the country's economic competitiveness and enhance the well-being of consumers, by establishing an appropriate investment environment;

With the approval vote of the Council of Ministers and the duty to report to the Congress of the Republic;

Has issued the following Legislative Decree:

**LEGISLATIVE DECREE  
APPROVING THE LAW ON SUPPRESSION  
OF UNFAIR COMPETITION**

**TITLE I  
GENERAL PROVISIONS**

**Article 1. Purpose of the Law**

This Law shall suppress any act or conduct of unfair competition, the real or potential effect of which is to impact or prevent the appropriate functioning of the competitive process.

**Article 2. Objective scope**

This Law shall apply to acts, the direct or indirect effect or purpose of which is to compete on the market. The application of this Law shall cover the acts performed by means of advertising. In no case shall it be necessary to determine that the person carrying out such acts does so habitually.

**Article 3. Subjective scope**

3.1 This Law shall apply to all natural persons or legal entities, unlawful companies, autonomous economic bodies or other public or private law, State or non-State entities, for or without profit-making purposes, which supply or demand goods or services, or whose partners, affiliates or union.....s carry out economic activity on the market. In the case of actual organizations or unlawful companies, it shall apply to their managers.

3.2 Natural persons acting on behalf of legal entities, unlawful companies, autonomous economic bodies or entities mentioned in the previous paragraph, under the responsibility thereof, shall through their acts generate liability, without civil representation conditions being required for that purpose.

**Article 4. Territorial scope**

This Law shall apply to any act of unfair competition which produces or may produce effects on all or part of the national territory, **even where said act has originated abroad.**

**Article 5. Primacy of actual circumstances**

The administrative authority shall determine the true nature of the forms of conduct investigated, and shall take into account the economic situations and relations claimed, developed or established in

reality. The form of the legal acts used by the contracting parties shall not adversely affect the analysis performed by the authority concerning the true nature of the forms of conduct underlying said acts.

## **TITLE II**

### **ACTS OF UNFAIR COMPETITION**

#### **Chapter I**

##### **General prohibition on acts of unfair competition**

#### **Article 6. General clause**

6.1 Acts of unfair competition, whatever form they adopt and whatever the means used to carry them out, including advertising activity, shall be prohibited and sanctioned, irrespective of the sector of economic activity in which they arise.

6.2 An act of unfair competition shall be that which results objectively, contrary to the requirements of entrepreneurial good faith, which must guide competition in a social market economy.

#### **Article 7. Condition of illegality**

7.1 The determination of the existence of an act of unfair competition shall not require proof of the awareness or will to commit such an act.

7.2 Nor shall it be necessary to prove that said act causes actual harm to the detriment of another competitor, consumers or economic public order; it shall be sufficient to note that the generation of said harm may occur.

#### **Chapter II**

##### **Declaratory list of acts of unfair competition**

#### **Sub-chapter I**

##### **Acts which affect market transparency**

#### **Article 8. Acts of deception**

8.1 These shall consist of the performance of acts, the real or potential effect of which is to mislead other market agents as to the nature, method of manufacture or distribution, characteristics, capacity for use, quality, quantity, price, conditions of sale or acquisition and, in general, regarding the attributes, benefits or conditions corresponding to the goods, services, establishments or transactions

which the economic agent performing such acts makes available on the market; or mislead as regards the attributes held by said agent, including everything represented by his entrepreneurial activity.

8.2 The dissemination of testimonial advertising not supported by authentic and recent experiences of a witness shall constitute an act of deception.

8.3 The duty of proving that objective statements concerning the goods or services announced are true and accurate shall be placed on the person who has communicated them in his capacity as announcer.

8.4 In particular, for the dissemination of any message referring to characteristics of an announced good or service, that may be verified, the announcer shall have the proof in advance, which supports the fact that said message is true.

#### **Article 9. Acts of confusion**

9.1 These shall consist of the performance of acts, the real or potential effect of which is to mislead other agents in the market concerning the entrepreneurial origin of the activity, establishment, specific services or goods, such that these are considered to have an entrepreneurial origin different to that which they actually possess.

9.2 Acts of confusion may occur through the misuse of goods protected by intellectual property rules.

### **Subchapter II**

#### **Undue acts relating to the reputation of another economic agent**

#### **Article 10. Acts of undue exploitation of another person's reputation**

10.1 These shall consist of the performance of acts which, while they do not constitute acts of confusion, may lead, in real or potential terms, to undue advantage being taken of the image, credit, fame, prestige or entrepreneurial or professional reputation that corresponds to another economic agent, including acts capable of generating a risk of association with a third party.

10.2 Acts of undue exploitation of another person's reputation may occur through the use of goods protected by intellectual property rules.

#### **Article 11. Acts of denigration**

11.1 These shall consist of the performance of acts, the real or potential effect of which, either directly or by implication, is to damage the image, credit, fame, prestige or entrepreneurial or professional reputation of another or other economic agent(s).

11.2 Without prejudice to what is stated in the previous paragraph, such acts shall be considered lawful, provided that:

- (a) they constitute information that is true in terms of its objective, verifiable condition, in line with reality;
- (b) they constitute information that is accurate in terms of its clear and current condition, presented in a way such that ambiguity or lack of precision is avoided as to the reality which pertains to the economic agent referred to or to what he is offering;
- (c) they are carried out in relevant manner in a way such that, *inter alia*, unjustified irony, satire, humor or sarcasm is avoided, in view of the circumstances; and,
- (d) they are performed in a relevant context in order to avoid allusions to nationality, beliefs, sexuality or any other strictly personal circumstances of the owners or representatives of another firm, *inter alia* allusions which do not transmit information allowing the consumer to evaluate the economic agent referred to or what he is offering regarding efficiency parameters.

## **Article 12. Acts of undue comparison**

12.1 Acts of comparison shall consist of the presentation of the advantages of what is specifically offered in relation to a competing offer; while other acts of comparison shall consist in presenting only the linking of what is specifically offered to the attributes of that which is offered by another person. In order to verify the existence of an act of comparison, it is necessary to perceive an unambiguous, direct or indirect allusion to what is offered by another economic agent, including through the use of another person's distinctive signs.

12.2 Such acts shall be considered lawful provided that they satisfy the provisions of paragraph 11.2 of this Law, otherwise they shall constitute acts of unfair competition.

### **Subchapter III**

#### **Acts which unduly alter one's own or another person's competitive position**

## **Article 13. Acts violating entrepreneurial secrecy**

These shall consist of the performance of acts, the real or potential effect of which is to:

- (a) disclose or exploit, without authorization of their owner, entrepreneurial secrets of another person, to which access has been gained lawfully with duty of reserve or unlawfully;
- (b) acquire entrepreneurial secrets of another person by means of spying, instigation of failure to fulfill a duty of reserve or similar procedure.

#### **Article 14. Acts in violation of rules**

14.1 These shall consist of the performance of acts, the real or potential effect of which is to benefit in the market from a significant advantage resulting from competition in the market through the violation of binding rules. In order to determine the existence of a significant advantage, the best competitive position obtained through the violation of rules shall be assessed.

14.2 The violation of binding rules shall be proved when:

- (a) the existence of a prior and firm decision of the authority competent to judge the matter determining said violation is demonstrated, provided that there is no administrative dispute pending the review of said decision; or,
- (b) the competing person obliged to have authorizations, contracts or titles necessarily required to carry out the entrepreneurial activity in question does not provide documents testifying to such possession. Where necessary, the authority shall request from the competent authority a report in order to evaluate the existence or otherwise of the corresponding authorization.

14.3 The entrepreneurial activity carried out by a public entity or State enterprise in violation of Article 60 of the Political Constitution of Peru shall constitute a violation of rules that shall be determined by the authorities which apply this Law. In this case, it shall not be necessary to provide proof of the acquisition of a significant advantage by any person carrying out said entrepreneurial activity.

#### **Article 15. Acts of industrial sabotage**

15.1 These shall consist of the performance of acts, the real or potential effect of which is to harm without justification the production process, commercial or entrepreneurial activity in general of another economic agent through interference in the contractual relationship maintained with its workers, suppliers, clients and other stakeholders, and the effect of which is to induce those parties to fail to perform some essential service or through meddling of any other kind in its processes or activities.

15.2 The acts which imply offering better conditions of hiring to workers, suppliers, clients or other stakeholders with another economic agent, as part of the competitive process for the sake of efficiency, shall not constitute acts of industrial sabotage.

#### **Subchapter IV**

#### **Acts of unfair competition carried out through advertising activity**

##### **Article 16. Acts against the principle of authenticity**

16.1 These shall consist of the performance of acts, the real or potential effect of which is to prevent the recipient of the advertising recognizing it clearly as such.

16.2 The dissemination of advertising under the cover of alleged news, journalistic opinions or recreational material, without warning clearly of its advertising nature, shall constitute a failure to observe this principle; in other words, without indicating in an express and emphatic manner that the advertising is a published report or a contracted announcement.

##### **Article 17. Acts against the principle of legality**

17.1 These shall consist in disseminating advertising which does not respect the binding norms of the legal order, as applied to advertising activity.

17.2 The failure to observe any sectoral provision regulating the conduct of advertising activity with respect to its content, dissemination or scope shall constitute a failure to observe this principle.

17.3 In particular, the following shall constitute acts against the principle of legality in advertising:

- (a) omitting to warn consumers regarding the main risks implied by the use or consumption of advertised dangerous products;
- (b) omitting to show the total price of a good or service without including applicable taxes and any additional charge essential for their acquisition, where the price is announced;
- (c) omitting the equivalent of the price in national currency in identical characters and of equivalent size to those which show the price of a good or service in foreign currency, where this is announced;
- (d) omitting in those announcements which offer directly, by showing interest rates, the conduct of financial liability or asset operations, the noting of the actual annual applicable interest rate

and of the amount and detail of any applicable additional charge;

- (e) omitting in those announcements which offer directly products with prices for credit sale, to note the amount of the initial quota where this applies to the case, of the total amount of interest, the actual annual interest rate applicable to the advertised product and the amount and detail of any additional applicable charge;
- (f) omitting, in each of the announcements which disseminate advertising of sales promotions, the clear indication of its duration and the minimum quantity of available units of products on offer; and,
- (g) omitting in the case of announcements of value added telephone services the clear indication of the destination of the call, the rate and times at which said tariff is applicable.

In the case of subparagraphs (d) and (e), advertisers must state in the announcement in question, as appropriate, the actual annual cost applicable to:

- (i) the active financial operation if this has been announced under a system of quotas, using an explanatory example; or
- (ii) the announced credit sale. Similarly, the number of quotas or payments to be made and their frequency should be recorded, where this is applicable to the case. However, advertisers may make available to consumers for whom the announcement is intended the additional information indicated in this paragraph through a free easy access service which allows them to receive information in a rapid and sufficient manner. The announcements must indicate in a clear and express manner the existence of this information and the references to location of said service.

#### **Article 18. Acts against the principle of social appropriateness**

These shall consist in disseminating advertising, the effect of which is to:

- (a) induce the recipients of the advertising message to commit an illegal act or an act of discrimination or offense on grounds of origin, race, sex, language, religion, opinion, economic condition or of any other kind;
- (b) provide services containing erotic content to a user group other than adults. The dissemination of this type of advertising shall be permitted only in the written press of



restricted circulation for adults and, in the case of radio and/or television, between the hours of 1.00 a.m. and 5.00 a.m.

**TITLE III**  
**PROVISIONS GUIDING THE EVALUATION OF ACTS OF UNFAIR COMPETITION**  
**CARRIED OUT THROUGH ADVERTISING ACTIVITY**

**Chapter I**  
**Freedom of entrepreneurial expression**

**Article 19. Exercise of freedom of entrepreneurial expression and its limits**

19.1 The conduct of advertising activity shall allow the exercise of freedom of expression in entrepreneurial activity and shall be the vehicle for free private initiative guaranteed by the Political Constitution of Peru.

19.2 The exercise of freedom of entrepreneurial expression shall not mean that acts of unfair competition are performed, which affect or limit the appropriate functioning of the competitive process in a social market economy, nor which affect the right to information on the goods and services appropriate for consumers, in accordance with the guarantees of the Political Constitution of Peru.

**Article 20. Use of advertising licenses**

In the exercise of advertising activity, the use of humor, fantasy and exaggeration shall be allowed, to the extent to which such resources do not contain acts of unfair competition.

**Chapter II**  
**Criteria for the determination of responsibility**

**Article 21. Interpretation of advertising**

21.1 Advertising shall be assessed by the authority taking into account that it is an instrument for promoting in the recipient of its message, directly or indirectly, the contracting or consumption of goods or services.

21.2 Said evaluation shall be carried out on the whole of the content of an advertisement, including words and numbers, spoken and written, visual and musical presentations, and sound effects, considering that the recipient of the advertising shall carry out a full and superficial analysis of each advertising slot which it sees. In the case of advertising campaigns, such campaign shall be analyzed as a whole, considering the particular features of the advertisements which they contain.

## **Article 22. Subsequent control**

Advertising shall not require authorization or supervision prior to its dissemination by any authority. Supervision of the enforcement of this Law shall be carried out only for advertising which has been disseminated in the market.

## **Article 23. Assignment of responsibility**

23.1 The administrative responsibility resulting from the commission of acts of unfair competition through advertising shall be borne, in all cases, by the advertiser.

23.2 Also responsible in administrative terms, insofar as is appropriate and on an individual basis, shall be the means of social communication used for the commission of acts of unfair competition which infringe dissemination rules that regulate, condition or prohibit the communication of specific contents or the advertising of particular types of products. This responsibility shall be independent of that borne by the advertiser.

23.3 In addition, administrative responsibility shall be borne by the advertising agency where the commission of acts of unfair competition is generated by advertising content distinct from the specific characteristics of the advertised good or service. This responsibility shall be independent of that borne by the advertiser.

## **TITLE IV**

### **UNFAIR COMPETITION SUPERVISION AUTHORITIES**

## **Article 24. Authorities**

24.1 The first administrative authority shall be the Commission, i.e. the Commission for Supervision of Unfair Competition and Commissions of Regional Offices of INDECOPI, in which the functions of that body are decentralized, according to the specific territorial competence.

The Commissions of the Regional Offices shall be competent only in respect of acts which originate and have effects, either real or potential, exclusively within their respective constituency of territorial competence.

24.2 The second administrative authority shall be the Tribunal, i.e. the Tribunal for Defense of Competition and Protection of Intellectual Property of INDECOPI.

24.3 Any other State authority shall be prevented from carrying out supervision or applying sanctions in advertising-related cases.

## **Article 25. The Commission**

25.1 The Commission shall be the authority with technical and functional autonomy charged with applying this Law with exclusive competence at the national level, apart from where said competence has been assigned or is assigned by express rule with legal rank to another public body.

25.2 The Commission's duties shall include:

- (a) ordering the Technical Secretariat to undertake sanction investigation proceedings and to sanction acts of unfair competition;
- (b) declaring the existence of an act of unfair competition and imposing the corresponding sanction;
- (c) deciding the continuation *ex officio* of the proceedings, in case of conciliation agreement between the parties, if the analysis of the facts denounced warns of the possible effects on the public interest;
- (d) issuing precautionary measures;
- (e) issuing corrective measures for acts of unfair competition;
- (f) issuing guidelines for market agents on the correct interpretation of the rules contained in this Law;
- (g) in their procedures, issuing an opinion, urging or recommending the legislative, political or administrative authorities with regard to the implementation of measures guaranteeing fair competition; and,
- (h) others assigned to it by the legal provisions in force.

## **Article 26. The Technical Secretariat**

26.1 The Technical Secretariat of the Commission shall be the body with technical autonomy that carries out the task of instigator of investigation proceedings and sanction of acts of unfair competition. It shall issue an opinion on the existence or otherwise of an infringing act which is the subject of

proceedings, provided that the Commission shall so require in order to consider it necessary to settle the substance of a case.

26.2 The duties of the Technical Secretariat shall be to:

- (a) carry out preliminary investigations;
- (b) instigate *ex officio* proceedings for investigation and sanction of acts of unfair competition;
- (c) in case of a denunciation by a party, take a decision on admission of proceedings of investigation and sanction of acts of unfair competition, whereby the denunciation may be declared unacceptable or inappropriate, as applicable;
- (d) institute sanction proceedings, by carrying out investigations and producing evidential means, exercising for the purpose the powers and competences which the laws have given to the INDECOPI Commissions;
- (e) in exceptional cases and with prior agreement of the Commission, books, archives, documents, correspondence and registers in general of the natural person or legal entity under investigation may be taken out of circulation for a period not greater than ten (10) working days, extendable for a similar period and copies taken thereof. In equal circumstances, they may be withdrawn from the premises where they are located, for up to fifteen (15) working days, and a legal order shall be required for them to be withdrawn. The withdrawal request shall be reasoned and shall be settled within twenty-four (24) hours by a Criminal Judge, without transfer to the other party;
- (f) carry out studies and publish reports;
- (g) prepare proposed guidelines;
- (h) channel administrative support as required by the Commission;
- (i) carry out training and dissemination activities for the application of the provisions contained in this Law; and,
- (j) others assigned to it by the legal provisions in force.

26.3 In order to develop its investigations, the Technical Secretariat shall be authorized to:

- (a) request natural persons or legal entities, unlawful companies and autonomous economic bodies, to exhibit any type of documents, including the accounting books and members, proofs of payment, internal or external correspondence and magnetic registers, including, in this case, the programs which are necessary to read them; and also to request information referring to the organization, business, shareholdership and structure of ownership of firms.
- (b) Summon and interrogate, through the officials appointed for the purpose, the persons subject to investigation or their representatives, employees, officials, advisors and third parties, by using the technical means which it considers necessary to generate a complete and reliable register of their declarations, and for this purpose it may use video, compact disc or any other type of electronic instrument recordings.
- (c) Carry out inspections, with or without prior notification, on the premises of natural persons or legal entities, unlawful companies and autonomous economic bodies, and examine the books, registers, documentation and property, and may verify the conduct of production processes and accept declarations from the persons located on such premises. In the act of inspection, a copy of physical, magnetic or electronic archives may be taken, as well as of any document considered relevant, or photographs may be taken or films recorded, as deemed necessary. Entry may be undertaken by requesting the support of the law-enforcement authorities.

The Technical Secretariat shall obtain prior judicial authorization in order to gain forced entry where it is not possible to enter premises or where they are locked, as well as for copying private correspondence which may be held in physical or electronic archives, in accordance with the special process described below:

- (i) the Technical Secretariat shall request a meeting with the criminal judge on duty in order to obtain special authorization to gain forced entry and/or a copy of private correspondence, without mentioning the name of the natural person or legal entity, unlawful company or autonomous economic body that will be subject to inspection without prior notice.
- (ii) Once the application is received, the Judge shall plan, within a period no longer than three (3) working days, and subject to responsibility, a meeting with the Technical Secretariat, at which a Public Prosecutor may be present.
- (iii) In the office of the Judge, and at the appointed time, the Technical Secretary shall explain to the Judge and, as appropriate, also the Public Prosecutor, the reasons for his request for special authorization for forced entry and/or a copy of private correspondence, and shall present the information or submit the documents providing evidence of the existence of reasonable clues concerning the commission of an administrative offense by the person or firm which will be subject to inspection and will be identified in the act and also in the place

where the inspection will be carried out. At said meeting, if the Judge considers that the application is justified, he shall declare it receivable and shall issue in the act the corresponding resolution, and a record shall be produced signed by all those present.

- (iv) In the decision mentioned in the previous paragraph the name, denomination or business name of the person or firm that will be inspected by the Technical Secretariat and also the place where the premises subject to inspection are located shall be indicated, and the scope of the corresponding authorization, which may include, *inter alia*, the review and copying of the electronic messages received or submitted by the managers, administrators or representatives of the person or firm subject to investigation shall be reasoned and specified.
- (v) In a period of not more than three (3) working days after the inspection visit has been completed, the Technical Secretariat shall prepare a report providing details of the proceedings, which shall be submitted to the Judge and, where appropriate, to the Public Prosecutor that attended the meeting.
- (vi) Both the Judge and the Public Prosecutor mentioned above shall retain absolute reserve on the current special process, subject to responsibility, from the beginning of the meeting at which the special authorization application for forced entry and/or a copy of private correspondence filed by the Technical Secretariat until the time when they receive from the Secretariat the report referred to in the previous paragraph.
- (vii) Where this is not the case, the Technical Secretariat shall be authorized to file a second special authorization application for forced entry and/or a copy of private correspondence.

## **Article 27. The Tribunal**

27.1 The Tribunal shall be the body charged with reviewing, in second and final instance, the acts that may be challenged, issued by the Commission or the Technical Secretariat.

27.2 Through its Technical Secretariat, the Tribunal shall be authorized, *ex officio*, to provide evidential means allowing the facts ascribed as an infringement to be clarified.

## **TITLE 5**

### **ADMINISTRATIVE SANCTIONS PROCEEDINGS**

#### **Chapter I**

#### **Postulation**

## **Article 28. Forms of instituting proceedings**

28.1 Sanctions investigation proceedings and those for the sanction of acts of unfair competition shall always be instituted *ex officio* at the initiative of the Technical Secretariat.

28.2 In the trilateral sanctions proceedings instituted by denunciation of a party, the denouncer shall be a party to the proceedings and the Technical Secretariat shall retain titular status for the *ex officio* case. Any person submitting a denunciation by a party shall not be required to prove the capacity of competitor or consumer linked to the person denounced, and it shall be sufficient for that person to be considered affected, actually or potentially, by the act of unfair competition being denounced.

28.3 Sanctions proceedings may be instituted when the denounced act is being carried out, where there is a threat that it occurs and, even, where its effects have already ceased.

#### **Article 29. Requirements for denunciation by a party**

The denunciation by a party which ascribes the conduct of acts of unfair competition shall contain:

- (a) name, denomination or business name of the denouncer, his domicile and the corresponding powers, where appropriate;
- (b) reasonable evidence of the presumed existence of one or more acts of unfair competition;
- (c) identification of the parties presumed to be responsible, provided that this is possible; and,
- (d) proof of payment of the fee for the right of prosecuting the sanction proceedings.

#### **Article 30. Acts prior to admission for processing by denunciation of a party**

Once a denunciation by a party has been submitted and prior to the decision to institute proceedings to identify and sanction acts of unfair competition, the Technical Secretariat may perform prior acts for the purposes of gathering information and/or identifying reasonable evidence of the existence of acts of unfair competition. These prior acts shall be carried out within a period of not more than thirty (30) working days, beginning from the time the denunciation is submitted.

#### **Article 31. Decision to institute proceedings**

31.1 The Technical Secretariat shall take a decision on admitting for processing a denunciation by a party and verify that the formal requirements contained in the Single Text of Administrative

Proceedings – TUPA INDECOPI – have been met, together with the competence of the Commission and the existence of reasonable evidence that this Law has been infringed.

31.2 The decision to assign responsibilities or to institute proceedings shall contain:

- (a) the identification of the person or persons to whom the presumed infringement is ascribed;
- (b) a succinct explanation of the facts underlying the establishment of proceedings, legal characterization of the possible infringement and, where appropriate, the appropriate sanctions;
- (c) the identification of the competent authority for resolving the case, with an indication of the rule assigning said competence to it; and,
- (d) the indication of the right to formulate responsibilities and the term for their exercise.

31.3 The decision to institute proceedings shall be communicated to the Commission within a period of no more than five (5) working days and, in this same period, the economic agents denounced shall be notified, together with the parties which submitted the denunciation by a party, who shall be considered party to the proceedings through said submission, as appropriate.

31.4 The decision to declare inadmissible or inappropriate the denunciation may be challenged before the Tribunal within five (5) working days.

#### **Article 32. Term for submission of evidence**

The person charged may defend himself on the charges made through the decision to institute proceedings within a maximum period of ten (10) working days, and shall submit the arguments and considerations he considers appropriate and offer the corresponding proof. This term may be extended by the Technical Secretariat once only and for a maximum period of five (5) working days, only if the need for such an extension has been proven.

### **Chapter II Precautionary Measures**

#### **Article 33. Precautionary measures**

33.1 At any stage of the proceedings, the Commission may, *ex officio* or at the request of any person who has submitted a denunciation by a party or from third parties with legitimate interest that have also been party to the proceedings, issue a precautionary measure intended to ensure the



effectiveness of the final decision, which shall include ensuring the implementation of the corrective measures and the coverage of any sanctions that may be imposed. In relation to the latter supposition, once the infringement has been declared by means of a firm decision, the precautionary measure relating to payment of the sanction shall be maintained subject to the responsibility of the coercive enforcer.

33.2 The Commission may adopt the precautionary measure, innovative or non-innovative, generic or specific, which it considers relevant, especially the order of termination of an act or the prohibition thereof if it has not yet been put into practice, the imposition of conditions, the confiscation, deposit or immobilization of the products, labels, packaging and advertising material subject to denunciation, the adoption of the measures necessary for the customs authorities to prevent the entry into the country of the products which are the subject of denunciation, which shall be coordinated with the competent authorities in accordance with the legislation in force, the temporary closure of the establishment of the party denounced, the adoption of positive behaviors and any others which help to preserve the fair competition affected and to avoid the damage that may be caused by the acts which are the subject of proceedings.

33.3 The precautionary measures shall be adjusted to the intensity, proportionality and needs of the damage that an attempt is being made to avoid.

33.4 In an emergency, in accordance with the facts, the President of the Commission may issue a precautionary measure intended to avoid irreparable damage, with responsibility to inform the Commission, at the following session thereof, so that it may decide to approve the measure imposed.

33.5 In relation to applications from any person which has submitted a denunciation by a party or third parties with legitimate interest that have also been party to the proceedings, the Commission may grant them or refuse them within a period of not more than fifteen (15) working days. The person filing the application shall not be subject to civil insurance measures such as countercaution and the like. The Commission may grant precautionary measures other than those requested, provided that it considers that they are better suited to the intensity, proportionality and need of the damage which an attempt is being made to avoid.

33.6 At any time during the proceedings, *ex officio* or at the request of a party, the suspension, amendment or revocation of the precautionary measures may be agreed.

33.7 The decisions which impose precautionary measures may be appealed before the Tribunal within five (5) working days. The appeal of precautionary measures shall be granted without suspensive effect, and shall be processed in a separate record, without prejudice to the provisions of Article 216 of the Law on General Administrative Procedure. The Tribunal shall take a decision on the appeal within a period of not more than ten (10) working days.

33.8 The Tribunal shall have the same powers assigned to the Commission for the issue of precautionary measures.

**Article 34. Requirements for the issue of precautionary measures**

For the grant of a precautionary measure, the Commission shall verify the concurrent existence of:

- (i) probability of the existence of an act of unfair competition; and
- (ii) danger of a delay in a final decision.

**Chapter III  
Proceedings**

**Article 35. Period of proof**

The period of proof shall be no less than thirty (30) working days and may not exceed one hundred (100) working days beginning from the expiry of the period for answering. The expenses relating to the processing of proof shall be borne by the parties offering it and shall not constitute a tax.

**Article 36. Means of proof**

36.1 The parties may offer, *inter alia*, the following means of proof:

- (a) documents;
- (b) inspections; and
- (c) expert evidence

36.2 The processing of proof other than that mentioned in the previous subparagraph, such as testimonials or interrogations, shall proceed if, in the opinion of the Commission, such proof is needed especially to settle the case.

36.3 Should it be necessary to conduct an inspection, this shall be carried out by the Technical Secretary or by the person appointed thereby for that purpose. Provided that an inspection is carried out, a record shall be produced, which shall be signed by the person responsible therefor, as well as by the interested parties exercising their representation on behalf of those responsible for the corresponding store, office or establishment.

36.4 Both for the processing of proof and the conduct of proceedings, including inspections, testimonials and interrogations, the Technical Secretary or the person appointed thereby may request

the immediate intervention of the National Police, without the need for prior notification, in order to guarantee that its functions are carried out.

36.5 Means of proof shall be financed by the person providing them. The costs of such proof that are ordered by the authority may be shared between the person accused and the person who has submitted the denunciation by a party, as appropriate.

36.6 The facts noted by the Technical Secretary, the person appointed thereby or by officials for whom the capacity of authority is recognized and which are formalized in a public document, observing the relevant legal requirements, shall have full evidential value, without prejudice to the proof that, in defense of their rights or interests, may be produced by those administered.

#### **Article 37. Inappropriate nature of means of proof**

The Commission may reject the means of proof provided by the person accused, by those who have submitted the denunciation by a party or by third parties with legitimate interest that have also been party to the proceedings, where they are clearly irrelevant or unnecessary, based on a reasoned decision.

#### **Article 38. Prosecution of proceedings**

38.1 Owing to its competence, the Technical Secretariat shall be authorized to carry out, *ex officio*, as many proof-related procedures as are necessary for the examination of the facts, and shall gather together the documents, information or objects that are relevant for determining, in a particular case, the existence or otherwise of the administrative infringement alleged.

38.2 If, as a result of the institution of proceedings, the initial determination of the facts is amended, as a result of its possible qualification or the sanctions to be imposed, the Technical Secretariat shall issue a new allegation decision, which shall replace as a pledge of responsibility the decision to institute proceedings, and shall inform accordingly the Commission and notify the persons accused, as well as those persons who have submitted the denunciation by a party, where appropriate. Where this new decision is issued, the terms for the formulation of proof and the legal period corresponding to the prosecution of the proceedings shall recommence.

38.3 Before finalizing the period of proof, while the Technical Secretariat considers that in the proceedings the means of proof and sufficient substitutes have been processed to settle the case, it shall inform the parties that it has concluded the prosecution of proceedings and that the proceedings have been brought to the attention of the Commission so that it may take a decision on the substance of the case.

## **Chapter IV**

### **Public and confidential information**

#### **Article 39. Access to records**

At any time during proceedings, and until such time as the proceedings are concluded at administrative headquarters, only the party accused, any person who has submitted a denunciation by a party or third parties with legitimate interest that have also been party to the proceedings, shall have the right to familiarize themselves with the processing of the file, have access thereto and to obtain copies of the records, provided that the Commission has not approved its reservation on producing confidential information.

#### **Article 40. Confidential information**

40.1 At the request of a party or third party with legitimate interest, including a public body, the Commission shall declare the reservation of such information which is of a confidential nature, either in relation to business secrets, information which affects personal or family privacy, that whose disclosure could harm its owner and, in general, that provided for as such in the Law on Transparency and Access to Public Information.

40.2 In accordance with the Law on Transparency and Access to Public Information, the application for declaration of a reservation concerning a commercial, industrial, technological or, in general, business secret shall be granted by the Commission or the Tribunal, provided that such information:

- (a) relates to knowledge of a reserved or private nature regarding a specific subject;
- (b) that those who have access to said knowledge have the will and informed awareness in keeping it reserved, adopting the necessary measures to maintain said information as such; and
- (c) the information has commercial, actual or potential value.

40.3 Access to the information declared subject to reservation may only be gained by the Members of the Commission and of the Tribunal, their Technical Secretaries and the persons duly authorized therefor who work or maintain a contractual relationship with INDECOPi.

40.4 In the cases in which the Commission or Tribunal grant the request for a reservation made, they shall take all the measures that are necessary in order to guarantee the reservation and confidentiality of the information.

40.5 In order for the application for a declaration of reservation to proceed, the interested party shall specify what the confidential information is, provide proof of its application and submit a non-

confidential summary of said information. In order to assess whether the information is confidential in nature, the Commission shall evaluate the relevance of the information, its prior non-disclosure and the possible effects which its disclosure might cause.

40.6 In relation to an inspection visit or an interview, and at the time this procedure is carried out, the interested party may request the general reservation of all information or documentation that it is declaring or submitting to the Technical Secretariat. Subsequently, the Technical Secretariat shall inform the interested party that information or documentation is relevant for the investigation, and shall grant a reasonable period for the interested party to individualize, in relation to the relevant information, the confidentiality application in accordance with the provisions of the previous paragraph.

40.7 The authority may declare *ex officio* the reservation on information linked to personal or family privacy or which places at risk the physical integrity thereof.

40.8 The procedures and periods for the declaration of reservation of confidential information shall be produced by Directive in accordance with the Law on Organization and Functions of INDECOPI.

## **Chapter V**

### **Conclusion of first instance proceedings**

#### **Article 41. Conclusion of period of proof**

41.1 The period of proof shall end ten (10) working days after the Technical Secretariat makes known to the Commission all the procedures, by considering that in the proceedings the means of proof and sufficient substitutes are available for the case to be settled.

41.2 If after reviewing the materials processed, the Commission considers it necessary to have available greater evidence, it shall indicate this accordingly to the Technical Secretariat which shall notify the parties so that they may absolve the orders of the Commission within a period of not less than five (5) working days, in accordance with the complexity of the request. The parties shall submit such absolution in writing, and attach the means of proof they consider appropriate or which have been requested from them.

#### **Article 42. The Technical Report**

42.1 Once the materials processed have been made known to the Commission, the Commission may request the Technical Secretariat, where it considers necessary, to provide a technical report which, in a maximum period of fifteen (15) working days, shall issue a statement on the following:

- (a) reference to the facts which it considers proven;

- (b) consideration of the existence or otherwise of the alleged administrative infringement; and,
- (c) proposed corrective measures which it considers necessary, where appropriate.

42.2 The Technical Report referred to in the previous subparagraph shall be notified to the parties to the proceedings, which shall have a period of ten (10) working days to make allegations known to the Commission.

42.3 Should the Technical Secretariat not find proof of the existence of an act of unfair competition, it shall provide the Commission with a declaration of the non-existence of an administrative infringement.

#### **Article 43. The oral report hearing**

Once the materials processed have been made known to the Commission, the Commission may, where it considers necessary and at the request of a party, summon that party to an oral report hearing. In any case, the Commission may, *ex officio*, summon any party to an oral report hearing. The corresponding summons shall be produced not less than five (5) working days in advance.

#### **Article 44. Preclusion of the submission of proof**

44.1 The parties may make written submissions, argue for and provide means of proof only until the end of the period of proof. The Commission may make provision subsequently, *ex officio* or at the request of a party, for the processing of additional means of proof, if, in its opinion, they are necessary to clarify the facts denounced.

44.2 Once the period of proof is over, the parties may only make written submissions and arguments when the Technical Secretariat notifies them so that they absolve the orders of the Commission or when they are responsible for absolving the content of the Technical Report of the Technical Secretariat, where appropriate. Similarly, the parties may submit final allegations within a period of ten (10) working days following the production of the oral report ordered by the Commission. The parties may not submit additional proof in their final allegations.

#### **Article 45. Final decision**

45.1 In order to issue its ruling, the Commission shall have a period of fifteen (15) working days beginning from the end of the period of proof, from the absolution of the content of the Technical Report of the Technical Secretariat or from expiry of the period which the parties have to make final allegations, as shall occur at the end.

45.2 The Commission decision shall be reasoned and shall settle all the matters resulting from the file. The decision shall not contain any assignment of responsibility to those involved for facts which have not been appropriately alleged in the institution of proceedings.

45.3 A decision shall be notified to the parties involved in the proceedings within a maximum period of ten (10) working days from its issue.

## **Chapter VI**

### **Second instance proceedings**

#### **Article 46. Appeal remedy**

46.1 The final decision of the Commission shall be appealable by the accused, by any person who has submitted a denunciation by a party and by third parties with legitimate interest who have been involved in the proceedings, within a period of ten (10) working days.

46.2 Similarly, the following acts by the Technical Secretariat or Commission shall be appealable within the same period, as appropriate:

- (a) those which demonstrate that it is impossible to continue proceedings; and
- (b) those which may produce a lack of defense of or cause irreparable harm to legitimate rights or interests.

46.3 The remedy of reconsideration shall not be used against the decisions and acts of the Technical Secretariat or Commission.

46.4 The appeal remedy shall be processed within a period not greater than one hundred and twenty (120) working days. The Tribunal decision shall be notified to the parties to the proceedings and to third parties who have been involved within a maximum period of ten (10) working days from its issue.

#### **Article 47. Lodging of appeal remedy**

47.1 The appeal shall be lodged with the authority which issued the decision being appealed, and said authority shall submit it to the Tribunal, together with the main file, or under separate cover, as appropriate, and once the requirements of acceptability and suitability have been satisfied, within a period of fifteen (15) working days. A statement declaring an appeal to be unacceptable or inappropriate shall allow the complaint remedy to be lodged before the Tribunal.

47.2 The parties interested in determining the existence of an infringing act and the imposition of a sanction may only appeal the final decision where this has acquitted the denounced party.

#### **Article 48. Processing of appeal remedy**

48.1 The Tribunal shall notify the interested parties, within a period of fifteen (15) working days from the time when the file is received, the arrival of the file and the beginning of processing of the appeal remedy.

48.2 The appellants may submit allegations, documents and evidence which they deem relevant within a period of fifteen (15) working days beginning from the notification referred to in the previous paragraph.

48.3 At the request of a party, or *ex officio*, the Tribunal shall summon to an oral report hearing the parties so that they may explain their final allegations, no less than five (5) days in advance.

48.4 The parties may submit final allegations only up to the five (5) working days following the production of the oral report. Any document submitted subsequently shall not be taken into consideration by the Tribunal.

#### **Article 49. Tribunal decision**

The Tribunal decision may not imply the imposition of more serious sanctions for the infringer sanctioned, where this recurs or challenges the Commission's decision.

#### **Article 50. Questioning of Tribunal decisions**

The final decisions of the Tribunal shall exhaust the administrative channels. No administrative remedy may be lodged and an administrative dispute complaint only may be lodged against such decisions within the terms of the relevant legislation.

### **Chapter VII Infringement prescription**

#### **Article 51. Period of prescription for administrative infringements**

Infringements of this Law shall be subject to a statute of limitations of five (5) years from the time the last act challenged as being an infringement is carried out. The statute of limitations shall be interrupted by any act of the Technical Secretariat relating to the investigation of the infringement which shall be made known to the party presumed to be responsible. The period shall recommence if



the proceedings remain adjourned for more than sixty (60) working days for a reason that cannot be ascribed to the party under investigation.

## **TITLE VI**

### **SANCTION AND ELIMINATION OF ACTS OF UNFAIR COMPETITION**

#### **Chapter I**

##### **Administrative infringement sanctions**

#### **Article 52. Sanction parameters**

52.1 The performance of acts of unfair competition shall constitute an infringement of the provisions of this Law and shall be sanctioned by the Commission subject to the following parameters:

- (a) if the infringement is characterized as slight and there has been no real effect on the market, with a warning;
- (b) if the infringement is characterized as slight, with a fine up to fifty (50) Tax Units (UIT) and which does not exceed ten per cent (10 per cent) of the gross income received by the infringer, relative to all its economic activities, corresponding to the financial year immediately prior to that during which the Commission issues its decision;
- (c) if the infringement is characterized as serious, a fine of up to two hundred and fifty (250) UIT and which does not exceed ten per cent (10 per cent) of the gross income obtained by the infringer, relative to all its economic activities, corresponding to the financial year immediately prior to that during which the Commission issues its decision; and,
- (d) if the infringement is characterized as very serious, a fine of up to seven hundred (700) UIT and which does not exceed ten per cent (10 per cent) of the gross income obtained by the infringer, relative to all its economic activities, corresponding to the financial year immediately prior to that during which the Commission issues its decision.

52.2 The percentages on the gross income obtained by the infringer, relative to all its economic activities, corresponding to the financial year immediately prior to that during which the Commission takes its decision, as indicated in the previous subparagraph, shall not be considered a parameter for determining the level of the corresponding fine in the cases in which the infringer: (i) has not provided proof of the amount of gross income obtained relative to all its economic activities, corresponding to said financial year; or, (ii) is a repeat offender.

52.3 The repeat offense shall be considered an aggravating circumstance, for which reason the applicable sanction shall not be less than the previous sanction.

52.4 For the purposes of calculating the amount of the fines to be applied in accordance with this Law, the UIT in force on the date of actual payment shall be used.

52.5 The applicable fine shall be reduced by twenty-five per cent (25 per cent) when the infringer pays the amount thereof prior to the end of the term for challenging the Commission decision which put a stop to the case and insofar as it does not lodge any kind of challenge against said decision.

**Article 53. Criteria for determining the seriousness of the infringement and adjusting the sanction**

In order to determine the seriousness of the infringement and the application of the corresponding fines, the Commission may take into consideration, *inter alia*, the following criteria:

- (a) the unlawful profit resulting from the commission of the infringement;
- (b) the probability of detection of the infringement;
- (c) the method used for and scope of the act of unfair competition;
- (d) the size of the affected market;
- (e) the infringer's market quota;
- (f) the effect of the act of unfair competition on actual or potential competitors, other agents participating in the competitive process, and consumers or users;
- (g) the duration in time of the act of unfair competition; and,
- (h) the repeat offense or reiteration of the commission of an act of unfair competition.

**Article 54. Statute of limitations on sanctions**

54.1 Action requiring sanctions to be carried out shall be limited to a period of three (3) years, beginning from the day following that on which the decision imposing the sanction is made firm.

54.2 The statute of limitations on sanctions shall be interrupted by the institution, with the knowledge of the interested party, of joint enforcement proceedings. This period shall be recalculated beginning from when the joint enforcement proceedings remain suspended for more than thirty (30) working days for a reason that cannot be ascribed to the infringer.

**Chapter II**  
**Corrective Measures**

**Article 55. Corrective measures**

55.1 In addition to the sanction imposed for the conduct of an act of unfair competition, the Commission may issue corrective measures leading to the re-establishment of fair competition in the market, and said measures may, *inter alia*, consist in:

- (a) ceasing the act or prohibiting it even if it has still not been carried out;
- (b) removing the effects produced by the act, through the conduct of activities, including under specific conditions;
- (c) the confiscation and/or destruction of the products, labels, packaging, infringing material and other elements of false identification;
- (d) the temporary closure of the infringing establishment;
- (e) the rectification of misleading, incorrect or false information;
- (f) the adoption of the measures necessary for the customs authorities to prevent the entry into the country of the products subject to infringement, which shall be coordinated with the competent authorities, in accordance with the legislation in force; or
- (g) the publication of the conviction decision.

55.2 The Tribunal shall have the same powers assigned to the Commission for issuing corrective measures.

### **Chapter III**

#### **Coercive fines**

#### **Article 56. Coercive fines for failure to carry out precautionary measures**

56.1 If a person obliged to carry out a precautionary measure ordered by the Commission or Tribunal does not do so, a fine of no less than ten (10) UIT or greater than one hundred and twenty five (125) UIT shall automatically be imposed on him, and adjustment of the fine shall take into account the criteria indicated for determining seriousness of an infringement and adjusting the sanction. The corresponding fine shall be paid within five (5) working days, following which its enforced recovery shall be ordered.

56.2 In cases where the failure to carry out a measure, as referred to in the previous paragraph, persists, the Commission may impose a new fine, successively duplicating the amount of the last fine imposed, up to the limit of seven hundred (700) UIT. The fines imposed shall not prevent the Commission from imposing a different sanction at the end of the proceedings.

#### **Article 57. Coercive fines for failure to carry out corrective measures**

57.1 If the person obliged to carry out a corrective measure ordered by the Commission in its final decision does not do so, a coercive fine equivalent to twenty five per cent (25 per cent) of the fine

imposed for performance of the act of unfair competition declared shall be imposed on him. The coercive fine imposed shall be paid within five (5) working days, following which its enforced recovery shall be ordered.

57.2 In cases where the failure to carry out a measure, as referred to in the previous paragraph, persists, the Commission may impose a new coercive fine, successively duplicating the amount of the last coercive fine imposed, until the corrective measure ordered is performed and up to the limit of sixteen (16) times the amount of the coercive fine originally imposed.

57.3 The coercive fines imposed shall not constitute sanctions for the conduct of an act of unfair competition.

## **TITLE VII COMPENSATION CLAIMS**

### **Article 58. Compensation for damages**

58.1 Any person harmed by acts of unfair competition declared by the Commission or, where appropriate, the Tribunal, may make to the Judicial Authority a civil claim for compensation for damages against those responsible identified by INDECOPI.

58.2 Any persons who have been denounced recklessly or falsely, with ill will or negligence, may also bring such an action.

## **TITLE VIII GLOSSARY**

### **Article 59. Definitions**

For the purposes of this Law:

- (a) advertising agency means any natural person or legal entity which provides design, preparation, organization and/or production of advertisements and other advertising services;
- (b) advertisement means the advertising dissemination unit;
- (c) advertiser means any natural person or legal entity who performs acts, the effect or direct or indirect aim of which is to compete on the market and which, by means of disseminating advertisements, aims to:

- (i) illustrate to the public, *inter alia*, the nature, characteristics, properties or attributes of the goods or services whose production, intermediation or service constitutes the subject matter of its activity; or,
  - (ii) encourages transactions to satisfy its business interests;
- (d) advertising means any form of communication disseminated by any means or carrier, and objectively suited or designed to promote, either directly or indirectly, the image, trademarks, products or services of a person, firm or entity in the exercise of its commercial, industrial or professional activity, within the framework of a competition activity, promoting the contracting or conduct of transactions to satisfy its business interests;
- (e) advertising campaign means advertisements disseminated in a single geographical and temporal area, by the same advertiser, by various means such as television, radio, sales catalogs, leaflets, newspapers, magazines, boards and the Internet, *inter alia*, with respect to the same products and presenting the same main advertising message;
- (f) means of social communication means any natural person or legal entity which provides services in any of the forms through which it is feasible to disseminate advertising, be it in a personalized or impersonal manner, on the national territory, by means such as correspondence, television, radio, telephone, Internet, facsimile, newspapers, magazines, posters, boards, flyers or any other means which produces a similar communication effect;
- (g) dissemination standard means any standard referring to the characteristics, arrangements for and prohibitions of the disclosure to the public of advertising, with the exception of those referring to the physical location of advertisements, the aim of which is urbanistic and not to regulate the advertising message;
- (h) promotion of sales means any discount designed to incentivize a transaction for goods or services in exceptional and temporary conditions of sale, which appear to be more beneficial than the conditions of the ordinary or standard offer. This may consist of a reduction in prices, increase in quantity, competitions, draws, exchanges and the like;
- (i) product advertising means any advertising fixed on the packaging, wrapping or body of the product. The labeling shall not be for advertising purposes, for which reason since product advertising is not considered it lies outside the scope of this Law;
- (j) testimonial advertising means any advertising which may be perceived by the consumer as a manifestation of opinions, beliefs, discoveries or experiences of a witness, by means of which the name of the person carrying out the testimonial is identified or is identifiable by his fame or

public notoriety;

- (k) labeling means basic commercial information consisting of data, instructions, records or information which the supplier provides to the consumer, pursuant to a legal norm or under recommended quality standards, expressed in neutral terms or simply descriptive, without assessments or valuations of the characteristics or benefits which the information gives to the product, i.e. without the aim of promoting its acquisition or consumption; and,
- (l) witness means any natural person or legal entity, in public or private law, other than the advertiser whose opinions, beliefs, discoveries or experiences are presented in advertising.

## **FINAL SUPPLEMENTARY PROVISIONS**

### **ONE. Primary competence**

The control of unfair forms of conduct shall be governed by the principle of primary competence, which shall lie with INDECOPI and the Supervisory Authority for Private Investment in Telecommunications (OSIPTEL), in accordance with the different laws. Recourse may not be had to the Judicial Authority without previously having exhausted the administrative remedies before those authorities.

### **TWO. Consumer rights**

The acts of unfair competition prohibited by this Law shall be sanctioned independently of the direct effects which they may produce to the prejudice of consumers' rights. Where consumers exist who are affected as a result of an act of unfair competition, it shall be the responsibility of the authority competent in relation to consumer protection to apply the provisions which govern such rights according to the relevant law.

### **THREE. Investigation of conduct with effects outside the country**

Within the exclusive framework of an international agreement, and pursuant to the principle of reciprocity, the Commission may investigate, in accordance with this Law, acts of unfair competition performed on the national territory but with effects in one or more countries which form part of the agreement in question.

### **FOUR. Exclusive nature of administrative competence and scope of exceptions**

The authorities competent for the application of this Law in accordance with the provisions of Title IV shall have exclusive competence at the national level for determining and sanctioning acts of unfair competition.

Administrative competence for the application of this Law may be assumed by a different administrative authority only when an express rule with legal rank so provides.

The application of this Law to the telecommunications public services market shall be the responsibility of the Supervisory Authority for Private Investment in Telecommunications (OSIPTEL), in accordance with Law No. 27336 – Law on Development of Functions and Powers of OSIPTEL. In this sense, the competent authorities, their powers and the procedures which govern their activities shall be those established within its normative framework.

Where an act of unfair competition that is determined and sanctioned is one that has been carried out through advertising activity, administrative competence shall lie only with the authorities competent for the application of this Law, in accordance with the provisions of Title IV, without any exception.

#### **FIVE. Acts of unfair competition relating to effects on intellectual property rights**

Administrative competence for the application of this Law in determining and sanctioning acts of unfair competition in methods used for acts of confusion and acts of undue exploitation of another person's reputation, which are linked to effects on intellectual property rights, shall be assigned to the corresponding Intellectual Property Commission, in accordance with the special legislation on this subject, and only if the denunciation by a party is submitted by the rightsowner or by any person authorized so to do thereby.

#### **SIX. Supranational standards**

The community or supranational standards which characterize acts of unfair competition shall be applied by the competent authorities indicated by this Law, provided that there is no conflict with the distribution of powers that these standards may determine. The interpretation of said community or supranational standards shall recognize the pre-eminence accruing to them.

#### **SEVEN. Validity and application**

This Law shall enter into force thirty (30) calendar days after the date of its publication in the Official Gazette El Peruano and shall be immediately applicable in terms of all its provisions, apart from those governing the administrative procedure, including those which determine the scale of sanctions, which shall be applicable only to the proceedings instituted subsequent to its entry into force.

#### **EIGHT. Application of this Law to financial services**

This Law shall not affect the validity or applicability of the Supplementary Law to the Law on Consumer Protection in relation to financial services, approved by Law No. 28587, nor to its regulatory standards issued in accordance with its single transitional provision, which shall continue to be fully valid and prevail over this Law. The provisions of this Law which cover the financial system shall therefore only apply in accordance with Law No. 28587 and its regulatory standards.

The provisions of Article 17(d), (e) and (f) of this Law shall be applicable only for the services provided or advertised by firms not subject to the supervision of the Supervisory Authority for Banks, Insurance and Private Pension Fund Administrators.

## **REPEAL PROVISIONS**

### **ONE. General repeal**

This Law shall be of public order and shall repeal all the legal or administrative provisions, of similar or lower rank, opposed to or contradicting it.

### **TWO. Express repeal**

The following standards shall be repealed expressly from the time this Law comes into force:

- (a) Decree Law No. 26122 and the rules amending, adding to and replacing it;
- (b) Legislative Decree No. 691 and the rules amending, adding to and replacing it;
- (c) Supreme Decree No. 039-2000-ITINCI insofar as it approves the single ordered text of normative instruments indicated in subparagraphs (a) and (b) above;
- (d) Supreme Decree No. 20-94-ITINCI and the rules amending, adding to and replacing it; and,
- (e) Articles 238, 239 and 240 of the Penal Code.

Any legal or administrative reference to the matters regulated by provisions contained in Decree Law No. 26122, Legislative Decree No. 691 and Supreme Decree No. 20-94-ITINCI, as well as the rules amending, adding to or replacing them shall be made in accordance with this Law, insofar as is applicable and appropriate.

**THEREFORE:**

I order that this Legislative Decree be published and enforced, and a report made to the Congress of the Republic.

Done at the House of Government, in Lima, on the 25<sup>th</sup> day of June 2008.



ALAN GARCÍA PÉREZ

Constitutional President of the Republic

JORGE DEL CASTILLO GÁLVEZ

President of the Council of Ministers

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