



**VOLUNTARY PEER REVIEW
ON CONSUMER PROTECTION LAW AND POLICY
PERU**





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NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to consumer protection policy. UNCTAD promotes the United Nations guidelines for consumer protection and encourages interested Member States to create awareness of the many ways in which Member States, businesses and civil society can promote consumer protection in the provision of public and private goods and services.

UNCTAD seeks to further the understanding of the contribution of consumer protection law and policy to development and to create an enabling environment for the efficient functioning of markets. The work of UNCTAD is carried out through intergovernmental deliberations, capacity-building activities, policy advice, and research and analysis on the interface between consumer protection, competition and development.

Voluntary peer reviews of consumer protection law and policy conducted by UNCTAD are mandated by the General Assembly in its resolution 70/186 of 22 December 2015 adopting the United Nations guidelines for consumer protection. The guidelines seek, among other things, to assist countries in achieving or maintaining adequate protection for their population as consumers.

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Voluntary peer reviews on consumer protection law and policy are conducted by UNCTAD at the annual meetings of the Intergovernmental Group of Experts on Consumer Protection Law and Policy or at the United Nations Conferences to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

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I. INTRODUCTION

In resolution 70/186 of 22 December 2015 on consumer protection, the General Assembly of the United Nations reaffirmed the United Nations guidelines for consumer protection as a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suited to their own economic and social and environmental circumstances. The guidelines promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The General Assembly also decided to establish an intergovernmental group of experts on consumer protection law and policy under the United Nations Conference on Trade and Development (UNCTAD) to provide the international institutional machinery for the guidelines. One of the mandates of this Intergovernmental Group of Experts on Consumer Protection Law and Policy is to conduct voluntary peer reviews of the national consumer protection policies of Member States, as implemented by consumer protection authorities. At its second session, the Group discussed the framework for such reviews¹ and encouraged Member States to volunteer for them.²

The purpose of voluntary peer reviews in this field is to provide an external and independent assessment of the effectiveness of consumer protection law and policy in a given country; to identify the challenges to be addressed and areas to be improved in the legal and institutional frameworks, thereby helping to enhance the quality and efficiency of consumer protection regimes; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures, designed in consideration of the economic and developmental particularities of each country, to address the challenges identified; and, where appropriate, contribute to the implementation of the recommendations by developing a capacity-building plan in consultation with the country concerned.³

To date, two countries, Morocco and Indonesia, have undergone reviews. Peru volunteered for the process in 2018, and its review will take place at the Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, to be held from 19 to 23 October 2020. As agreed by the Intergovernmental Group of Experts on Consumer Protection Law and Policy at its first session,⁴ the scope of the review should correspond to the areas of interest of the volunteering country.

Peru decided on the following priority areas for its review: strengthening the National Integrated Consumer Protection System; electronic commerce and the sharing economy; consumer product safety; and dispute resolution mechanisms, especially cross-border ones. This selection guided the drafting of the substantive report and will guide the interactive discussions that take place during the review.

The present report, which will serve as a basis for the interactive stage of the voluntary peer review of the country's consumer protection law and policy, has three aims: a descriptive one, in that it details the Peruvian consumer protection system; an evaluative one, in that it compares national best practices with international ones; and a prescriptive one, in that it contains recommendations for strengthening consumer protection in the country.

Following this introduction, Chapter II will briefly describe the political, economic and social context in Peru. The substantive portion of the report is contained in the next four chapters, which will address the legislative framework (Chapter III), the public policy framework (Chapter IV), the institutional framework (Chapter V) and the participation of the associative and private sectors (Chapter VI). The chapter on the legislative framework will centre on the main consumer protection law, the 2010 Consumer Code, which sets out substantive law on consumer protection, the system of liability and sanctions, the collective actions available on behalf of consumers and the National Integrated Consumer Protection System, and will supplement the discussion with references to other

¹ TD/B/C.I/CPLP/6.

² TD/B/C.I/CPLP/9 and TD/B/C.I/CPLP/9/Corr.1.

³ TD/B/C.I/CPLP/6, para. 6.

⁴ TD/B/C.I/CPLP/4, paras. 36 and 38.

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laws relevant to consumer protection and a brief analysis of consumer data protection. The chapter on the public policy framework will focus on the National Consumer Protection Policy and the National Consumer Protection Plan and will highlight recent initiatives related to electronic commerce.

Chapter V, on the institutional framework, will concentrate on the work of the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOP), this being the main consumer

protection agency in Peru, but will also touch on other public entities involved in consumer protection, especially regional and local governments. Chapter VI will then look at the role of consumer associations and suppliers as key stakeholders in consumer protection.

Chapter VII will end the report with a summary of the conclusions and recommendations arrived at over the course of the review, indicating both the target audience for the recommendations and the level of priority accorded to each.

II. POLITICAL, ECONOMIC AND SOCIAL CONTEXT

Peru, a country located on the western coast of South America, has a population of over 31 million and shares borders with the Plurinational State of Bolivia, Brazil, Chile, Colombia and Ecuador. Under the Constitution of 1993, Peru was constituted as a democratic State governed by the rule of law and taking the form of a sovereign, independent social republic. It has a unitary, representative and decentralized system of government, organized in accordance with the principle of separation of powers. One of the primary duties of the State is to promote public welfare, which is grounded in justice and the comprehensive and balanced development of the nation. Peru recognizes the freedom of private enterprise and has a social market economy. The State guides the country's development and acts mainly in the areas of employment promotion, health, education, security, public services and infrastructure.

The President of the Republic is the head of the executive branch and is both the Head of State and Government and the Commander in Chief of the Armed Forces and the National Police. All acts of the President must be approved by the Council of Ministers, which is the body responsible for overseeing and managing all public services. Legislative authority resides with Congress, which is unicameral. The judicial branch is an autonomous entity of the Republic and is empowered to administer justice. Its highest adjudicating body is the Supreme Court, with the president of this court also serving as the head of the judicial branch. The Constitutional Court is the final arbiter in matters of constitutional interpretation and ensures that any laws enacted stay within the bounds of the Constitution. Campesino and indigenous communities can exercise judicial authority within their lands, in accordance with customary law. At the international level, Peru was a founding member of the United Nations, having joined the organization on 31 October 1945.⁵

The United Nations Development Programme (UNDP) assigned Peru a human development index value for 2018 of 0.759, placing it in the high human development category and 82nd out of 189 countries

and territories,⁶ a rank it shared with Algeria and North Macedonia. The country's human development index value rose by 23.8 per cent, from 0.613 to 0.759, between 1990 and 2018. Over the same period, life expectancy at birth increased by 10.4 years, mean years of schooling increased by 2.6 years and expected years of schooling increased by 1.9 years. The country's gross national income per capita increased by around 148.3 per cent between these same years.

The gross domestic product (GDP) of Peru was US\$ 222 billion in 2019.⁷ According to the World Bank, the Peruvian economy has gone through two distinct phases of economic development since 2000.⁸ From 2002 to 2013, Peru had one of the fastest growing economies in Latin America, with GDP increasing at a rate of 6.1 per cent annually. Favourable external conditions, coupled with prudent macroeconomic policies and structural reforms in various areas, set the stage for high growth and low inflation. The poverty rate fell from 52 per cent in 2005 to 26.1 per cent in 2013, which meant 6.4 million people were lifted out of poverty during those years. Extreme poverty, i.e. the percentage of the population living on less than \$3.2 per day, fell from 30.9 per cent to 11.4 per cent over the same period. Between 2014 and 2018, annual GDP growth slowed to 3.2 per cent owing to a drop in commodity prices, including the price of copper, the country's top export. The country was able to weather the slowdown thanks to prudent fiscal, monetary and exchange rate policies. At the same time, an increase in mining output boosted exports and offset the lack of domestic demand. In 2019, the current account deficit was 1.6 per cent and net international reserves amounted to 31 per cent of GDP. Public debt is equal to 25.8 per cent of GDP, one of the lowest ratios in the region, and inflation is steady at 2.3 per cent, a

⁵ United Nations, Growth in United Nations membership, 1945-present. See www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html.

⁶ UNDP, "Human Development Report 2019: Inequalities in Human Development in the 21st Century – Briefing note for countries on the 2019 Human Development Report – Peru". Available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/PER.pdf.

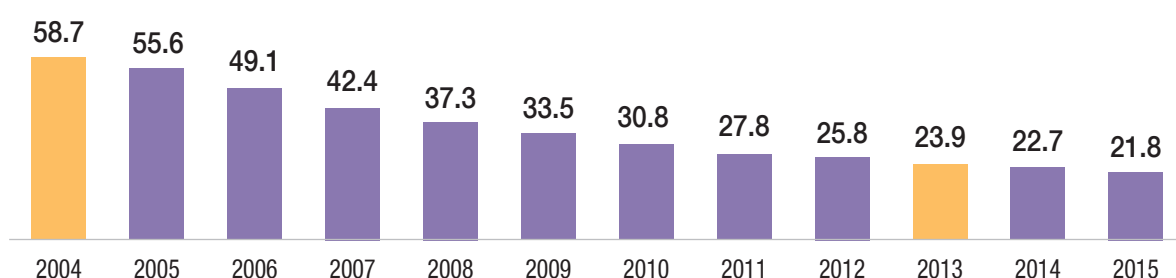
⁷ World Bank, 2020, Data: Peru. See <https://data.worldbank.org/country/peru>.

⁸ Ibid.

Figure II.1
Access to basic services and change in poverty rate

| Percentage of households with... | 1993 | 2015 |
|--|-------------|-------------|
| access to public water supply (nationally) | 46.7 | 85.4 |
| Urban areas | 68.5 | 92 |
| Rural areas | .. | 64.5 |
| connection to public sewage system (nationally) | 40 | 77.3 |
| Urban areas | 63.3 | 88 |
| Rural areas | .. | 43.1 |
| electricity from public utilities (nationally) | 54.9 | 93.9 |
| Urban areas | .. | 98.9 |
| Rural areas | .. | 77.9 |

NATIONAL POVERTY RATE OVER TIME (%)



Source: National Institute for Statistics and Data Processing.

rate within the Central Bank's target (between 1 and 3 per cent).⁹

With respect to demographic changes and their impact on consumption, 2017 data from the National Institute for Statistics and Data Processing¹⁰ indicate that the country's economically active population outnumbers its population of children and older persons (see figure II.2). While this finding points to an ageing

population in the future, it also brings demographic benefits, as more citizens are in a position to save, invest and consume. Another characteristic of the population of Peru is that it is highly concentrated in urban areas, with more than 75 per cent of the population living in cities.¹¹

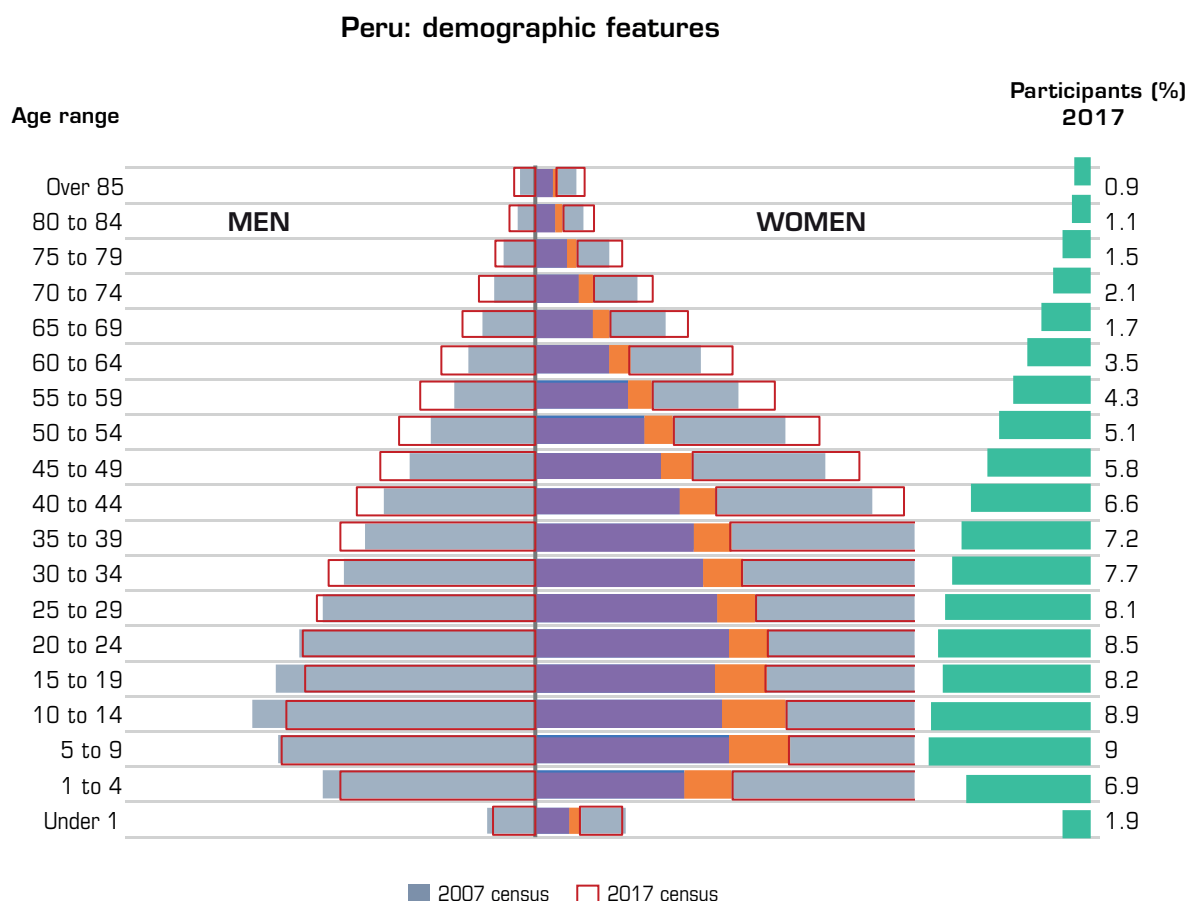
While the country has had unquestionable success in reducing poverty, it still has the challenge of reducing inequality before it. The poorest class makes up 38

⁹ Ibid.

¹⁰ National Institute for Statistics and Data Processing, 2018, *Censos Nacionales 2017: XII de Población y VII de Vivienda. Perú: Crecimiento y distribución de la población, 2017*. Available at https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1530/libro.pdf.

¹¹ INDECOPI, 2017, *Política Nacional de Protección y Defensa del Consumidor - Plan Nacional de Protección de los Consumidores 2017-2020*, p. 5. Available at [www.indecopi.gob.pe/documents/51084/126949/Pol por cientoC3 por cientoADtica_Plan_Consumo/9494a908-5d6b-4277-fa25-bef2ee7b4b3a](http://www.indecopi.gob.pe/documents/51084/126949/Pol+por+cientoC3+por+cientoADtica_Plan_Consumo/9494a908-5d6b-4277-fa25-bef2ee7b4b3a).

Figure II.2
Population pyramid based on 2007 and 2017 censuses



per cent of the population, while the richest makes up 13 per cent.¹² Peruvians with lower incomes are more likely to be vulnerable consumers and/or in a situation of disadvantage and therefore merit greater attention and protection. This situation is compounded by the gender gap, as currently 8.3 per cent of women are illiterate, compared to 2.3 per cent of men.¹³ Although 92.8 per cent of Peruvian households have access to a fixed or mobile telephone, Internet or television, and

51 per cent of Peruvians above 6 years of age use the Internet, the digital divide between urban and rural areas remains considerable: in the Lima metropolitan area, 70.9 per cent of inhabitants have access to the Internet, compared to 13.2 per cent in rural areas.¹⁴

¹² Ibid., p. 6.

¹³ National Institute for Statistics and Data Processing, *Estadísticas, Analfabetismo y alfabetismo: Tasa de analfabetismo de mujeres y hombres de 15 y más años de edad, según ámbito geográfico (2018)*. Available at www.inei.gob.pe/estadisticas/indice-tematico/analfabetismo-y-alfabetismo-8036/.

¹⁴ National Institute for Statistics and Data Processing, 2018, *Estadísticas de las tecnologías de información y comunicación en los hogares*. January-March 2018, Technical Report No. 2. Available at www.inei.gob.pe/media/MenuRecursivo/boletines/01-informe-tecnico-n02-tecnologias-de-informacion-ene-feb-mar2018.pdf.

III. LEGISLATIVE FRAMEWORK

Under its 1993 Constitution, Peru adopted a political model based on a social market economy, with the State guiding the country's development and acting mainly in the areas of employment promotion, health, education, security, public services and infrastructure. Article 65 of the Constitution contains an explicit reference to consumer protection, stipulating that: "The State shall defend the interests of consumers and service users. To this end, it shall guarantee the right to information in respect of the goods and services available on the market. It shall also be responsible for ensuring, in particular, the health and safety of the population."

Under the Constitution, Peru has been able to build strong legislative and public policy frameworks for consumer protection. Both frameworks are addressed in the present review, as is the institutional framework, with a special focus on INDECOPI and other government bodies involved in consumer protection, consumer associations and suppliers. In defining the scope of study, consideration was given to the areas of interest expressed by Peru, the United Nations guidelines for consumer protection and other relevant international instruments that codify international best practices.

This chapter, on the legislative framework, focuses on Peru's main consumer protection law, the Consumer Code, its implementing regulations and special laws. It also looks at other laws that are either expressly referred to in the Code or relevant to the United Nations guidelines for consumer protection. There will also be a brief analysis of personal data protection, as it has a significant impact on consumer welfare and was identified as a priority area of study.

A. THE CONSUMER CODE

The principal legal instrument in the area of consumer protection is Act No. 29571 of 14 August 2010, under which the Consumer Code was adopted. The Peruvian legislature's decision to systematize consumer protection legislation in the Consumer Code took due account of the specific nature of the subject matter and the need to ensure that consumer protection is reflected in all relevant legislation. This

codification has also allowed for the systematic and coherent arrangement of consumer protection law, which helps to provide legal certainty. However, codification in this area of law remains a minority practice among UNCTAD member States, with Brazil, Canada (Quebec), France and Italy, in addition to Peru, standing out as exceptions.¹⁵

Given the cross-cutting nature of consumer protection policy, it is inevitable that other bodies of legislation will have an impact on the Consumer Code. This situation has been addressed by applying the principles of speciality and supplementarity, which are enshrined in the Code itself. In practice, this means that, while the Code is comprehensive in its regulation of consumer relations, special legislation, such as that regulating public health and financial services, may complement or supplement it. This section focuses primarily on the Code but also makes reference to other laws that are particularly important to consumer protection.

1. Principles and objectives

One of the key features of the Consumer Code is that, in article V, it sets out the principles that govern it and inform the interpretation of all consumer protection rules, as follows:

1. The principle of consumer sovereignty, which reaffirms the autonomy, freedom and responsibility inherent in consumer preference;
2. The pro-consumer principle, according to which a rule must be interpreted in the consumer's favour;
3. The principle of transparency, according to which suppliers have a duty to provide truthful and adequate information about the products or services they offer;
4. The principle of the correction of asymmetry, according to which consumer protection rules aim to correct irregularities or bad practices arising from information asymmetry or imbalances between consumers and suppliers;

¹⁵ UNCTAD, 2017 *Manual on Consumer Protection* (UNCTAD/DITC/CPLP/2017/1).

5. The principle of good faith, according to which consumers, suppliers and consumer associations must approach consumer relations in good faith;
6. The principle of minimum protection, according to which sectoral rules may provide for a higher level of protection;
7. The pro-associative principle, according to which the State has a responsibility to facilitate the activities of consumer associations; and
8. The principle of the primacy of reality, according to which the facts must take precedence over the contents of formal texts in the assessment of the nature of a given situation.

Article VI of the Consumer Code establishes various public policy guidelines that the State is required to follow, both in drafting regulations to implement laws and other texts having the status of laws and in monitoring compliance with them. In this article, lawmakers succeeded in laying down, in a text having the status of a law, the reach and aims of all public authorities, including both the lead consumer protection agency and the other authorities, agencies and ministries concerned, thereby promoting unified and coherent consumer protection efforts in the country.

The public policy goals are in line with those of the United Nations guidelines for consumer protection. In addition to protecting the health and safety of consumers, defending their interests, upholding their right to information, and developing educational and training programmes, States are required to recognize the vulnerability of consumers and afford special protection to the most vulnerable and disadvantaged among them. Other guidelines include ensuring that dispute resolution and redress mechanisms are in place; facilitating citizen participation and the activities of consumer associations; and fostering a culture of consumer protection, sustainable consumption, quality goods and services, and universal access to health products. Finally, the Code recognizes the cross-cutting nature of consumer protection.¹⁶

¹⁶ United Nations Guidelines for Consumer Protection, chap. I (Objectives), para. 1: “these guidelines for consumer protection have the following objectives: (a) to assist countries in achieving or maintaining adequate protection for their population as consumers; (b) to facilitate production and distribution patterns responsive to the needs and desires of consumers; (c) to encourage high levels of

Through this language, the Code reaffirms consumer protection as a State policy that not only safeguards the economic interests of consumers but also provides the backbone for the social market economy. The State must focus on monitoring compliance with the law and defending the rights of consumers. It must also invest in prevention and in involving all stakeholders in order to improve market dynamics for the benefit of society as a whole. It is important to note that the public policy objectives set out in the Code are binding on all State agencies, and that all State agencies are required to monitor compliance with these objectives in their respective areas of competence.

The Consumer Code succeeds in regulating both the substantive aspects of consumer protection and the institutional and oversight-related aspects. This has placed the Code, which coincides in large part with the letter and spirit of the United Nations guidelines for consumer protection and international best practices, at the forefront of consumer protection. The substantive law portion of the Code includes definitions and titles on consumer rights and the consumer-supplier relationship, contracts, abusive business practices and consumer protection with respect to specific products or services. These titles are followed by secondary rules on liability and sanctions, collective actions to defend consumer rights, and components of the institutional framework such as the National Integrated Consumer Protection System.

2. Substantive law

Titles I to IV of the Consumer Code contain the bulk of the substantive law on consumer protection. Article IV.1, which is part of the Code’s introductory title, sets out the definition of a consumer, who may be either a natural or a legal person (notably a microenterprise) provided that he, she or it is the end user and is acting outside the scope of any business activity. Article III defines the scope of the Code, which extends to consumer relations engaged in by public and private sector suppliers and even covers

ethical conduct for those engaged in the production and distribution of goods and services to consumers; (d) to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; (e) to facilitate the development of independent consumer groups; (f) to further international cooperation in the field of consumer protection; (g) to encourage the development of market conditions which provide consumers with greater choice at lower prices; [and] (h) to promote sustainable consumption”.

transactions concluded without charge when they have a commercial purpose. The Code's substantive provisions on consumer protection are extensive and coherent. Only those provisions that represent good practices or highlight areas for improvement will be discussed below.

The rights granted to consumers are the same as those found in most modern legislation. Notably, and uncommonly, however, these rights include the "right to fair and equitable treatment in all commercial transactions and to be free from discrimination on the grounds of origin, race, sex, language, religion, opinion, or economic or other status". Articles 38 to 40 expand on this stipulation by prohibiting suppliers from engaging in such discrimination or from barring individuals from their premises when, for example, they do not pose a threat to the security of the and are not disturbing other customers. Whenever certain consumers are treated differently to others, there must be objective and reasonable grounds justifying this treatment. Furthermore, establishments open to the public that place objective and warranted restrictions on access to their premises must inform consumers of these restrictions directly, clearly and in a timely manner, prior to the act of consumption.

This prohibition on discrimination demonstrates the importance of consumer relations to the realization of fundamental rights such as the right to non-discrimination, which is also enshrined in article 2 of the Constitution. In addition, the State must pay special attention to the needs of vulnerable or disadvantaged consumers, since, as a group, they are more susceptible to discrimination in consumer relations. Article 41 of the Code, on the other hand, provides for positive discrimination in favour of pregnant women, children, older adults and persons with disabilities, who must be guaranteed priority service by suppliers, thereby reinforcing the emphasis on guarantees in the Code and its application.

The Consumer Code addresses consumer protection in advertising in its treatment of the right of access to timely, sufficient, truthful, easily accessible and relevant information and regulates the various forms of advertising, including promotions, prize draws, exchanges, competitions and advertising aimed at minors. However, new advertising methods used in the digital economy, such as personalized marketing, online endorsements and fake reviews, remain unregulated. An attempt has been made to address

this lacuna, which is still very common in most laws, through the policies of INDECOPI, as detailed later in this report.

Consumers' right to health and safety is also addressed in the Code, which recognizes the vulnerable position of consumers and their right to information and effective protection against products and services that, outside normal and foreseeable circumstances, could pose a risk to their health or physical integrity. The consumer health and safety microsystem includes the following specific regulations concerning procedures for providing information on hazardous products or services and withdrawing such products from the market: Supreme Decree No. 050-2016-PCM, on the procedure for issuing warnings and alerts regarding unforeseen risks to consumer health and/or safety associated with products or services placed on the market; and Resolution No. 164-2016-INDECOPI/COD of the Office of the President of the Governing Board of INDECOPI, on information regarding products that pose a risk to consumer health or safety.

This body of law establishes the right to effective protection against products and services that, under normal and foreseeable conditions, represent a risk or hazard for the life, health or physical integrity of consumers. It also establishes the right to have the product repaired or replaced, to have the service performed again or, in the cases provided for in the Code, to have the amount paid refunded, depending on the circumstances. Also addressed is the obligation for suppliers to take measures to reduce or eliminate any unforeseeable risks posed by a product or service, that is, any defects, as soon as they are detected, and to set forth a procedure for informing consumers, the market and the authorities of these risks. The Code also accords special attention to consumer protection issues related to food, particularly questions of quality, supply and information on the product's origin, condition and ingredients.

The regulations governing contracts are exhaustive and cover standard-form contracts, unfair terms (their nature, consequences and non-application) and general contract terms, which are subject to prior administrative approval in the case of public services or services subject to economic regulation. Under the Consumer Code, abusive business practices include practices that are coercive, aggressive or deceptive, either in the marketing or provision of goods and services or in the collection of payments.

These elements, relating to the promotion and protection of consumers' economic interests, have been transposed from the United Nations guidelines for consumer protection¹⁷ and have been given a form that is legally satisfactory and allows them to be implemented fully.

Special attention is paid to consumer protection legislation related to specific products or services, such as regulated public services; health, educational, real estate and financial products and services; and credit services provided by businesses whose activities are not overseen by the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators.

The specific legislation governing financial services is in line with the United Nations guidelines for consumer protection,¹⁸ and includes, in addition to the Consumer Code, Act No. 28587, which supplements the Consumer Protection in Financial Services Act, and Act No. 26702, which constitutes both the General Act on the Financial and Insurance Systems and the Organic Act establishing the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators. One element that is not addressed in the Code is the promotion of cost efficiency and transparency for remittances, such that consumers are provided with clear information on the price and delivery of the funds to be transferred, the exchange rates applied, and all fees and other costs associated with money transfers, as well as the remedies available when transfers fail.¹⁹ The Code is also silent on financial inclusion and access to financial services, even though these issues have been addressed in government policies.

The Consumer Code and the special laws provide for powers to be shared between INDECOPI and the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators. In general terms, the Office has "broader and more absolute authority" to enforce compliance with the rules governing the financial system, exercising oversight in respect of the entire system and powers of interpretation in respect of the rules.²⁰ To ensure that it is able to exercise effective prudential oversight,

the Office is empowered to carry out inspections to evaluate the conduct of the financial institutions under its supervision. These inspections also serve to bring issues affecting consumer protection to the attention of the Office, which responds to them on the basis of their cumulative impact on the health of the financial system.

The Office is thus responsible for the regulation and oversight of the financial system. It also regulates the information that financial institutions must provide to consumers, and the manner in which it should be provided, in relation to transactions on which interest, commissions and/or other charges are levied. For its part, INDECOPI ensures compliance with the consumer rights set out in the Consumer Code by carrying out investigations either *ex officio*, that is, of its own accord, or in response to complaints received from consumers. The only interaction envisaged between the two bodies under the Code is the technical report that INDECOPI must request from the Office whenever an interpretation of Act No. 26702 is required.

Peruvian lawmakers have resolved the conflict of interest that was inherent in the Office's dual function – preserving the stability of the financial system, on the one hand, and monitoring compliance with consumer protection legislation, on the other – by authorizing INDECOPI to initiate *ex officio* proceedings against financial institutions even when they are operating under the Office's supervision. This provision is in line with the recommendations of the United Nations guidelines for consumer protection in that its aim is to ensure effective application of the rules protecting users of financial services. INDECOPI thus fulfils its role as lead consumer protection authority, while the Office oversees the health and stability of the financial system. In practice, however, this division of powers may lead to situations in which INDECOPI and the Office both take action. Such situations should be resolved in accordance with the principles of distribution of powers and sincere cooperation that guides all executive branch action, without any need to adjust the manner in which powers are currently distributed between the institutions.

¹⁷ Ibid., chap. V (Guidelines), section C, paras. 20–32.

¹⁸ Ibid., section J, paras. 66–68.

¹⁹ Ibid., para. 66 (h).

²⁰ Act No. 26702, General Act on the Financial and Insurance Systems and Act Establishing the Office of the Superintendent of Banking and Insurance. Available at

[www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/8CE5E01E937E76105257A0700610870/\\$FILE/26702.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/8CE5E01E937E76105257A0700610870/$FILE/26702.pdf).

3. Liability and sanctions

Title V of the Consumer Code contains secondary rules on the liability of suppliers and the administrative sanctions that INDECOPI may apply. Suppliers are subject to both civil liability, which is governed by the Civil Code and comes under the jurisdiction of the competent judicial authorities, which have sole jurisdiction in cases involving damages, and administrative liability, which is governed by the Code and comes under the national jurisdiction of INDECOPI.

Whenever a supplier violates the provisions of the Code, administrative proceedings may be initiated ex officio or on the basis of a complaint filed either by the consumer concerned or by a consumer association. The rules allow for proceedings initiated at the request of a party to be fast-tracked, and for alternative dispute resolution by means of confession of judgment, conciliation, mediation, settlement or any other agreement between the supplier and consumer. If the supplier remedies or corrects the punishable conduct, the administrative proceedings are terminated unless human life, health or safety has been endangered or discrimination is involved.

Once proceedings have been initiated, INDECOPI has the power to impose precautionary measures and may even order the temporary cessation of the operations of the supplier concerned. If INDECOPI determines that a violation has occurred, it may impose sanctions of between 50 and 450 tax units, equivalent to approximately \$62,000 and \$560,000, respectively. Exceptionally, the directors of the offending companies may be declared jointly and severally liable for their involvement in the violation if they are found to have acted with malicious intent or to have been grossly negligent.

One of the mitigating circumstances provided for is the existence of an effective programme of voluntary compliance with the rules contained in the Code. This is developed further in Supreme Decree No. 185-2019-PCM, by which the rules promoting and regulating the voluntary implementation of legal compliance programmes in the areas of consumer protection and commercial advertising were adopted. A key element of this mitigating circumstance is that the violation involved must be an isolated incident, and that there must be internal mechanisms for monitoring and auditing the programme and reporting potential

instances of non-compliance so as to facilitate INDECOPI's audit activities.

Without prejudice to the corresponding administrative sanction, INDECOPI may order corrective and supplementary remedies ex officio or at the request of a party. Corrective remedies are intended to compensate the consumer for the direct and immediate effects of the administrative violation and restore the situation existing prior to the violation. Supplementary corrective remedies are intended either to reverse the effects of the conduct leading to the violation or to prevent its recurrence in the future. In addition to violations of the Code, sanctions generally may also apply to violations of orders, breaches of conciliation agreements and the non-payment of costs and expenses awarded to consumers with substantiated claims.

This title of the Code also introduced the mechanism for complaints pursued before INDECOPI known as the "summary procedure". This procedure is faster than the ordinary one and is reserved for consumer complaints involving an amount, based on the value of the product or service in dispute, not exceeding three tax units (approximately \$3,733). Under the summary procedure, complaints must be resolved within 30 business days (compared to 120 business days under the ordinary procedure).

During administrative proceedings initiated at the request of the consumer, prior attempts to settle directly with the supplier are not taken into account. This means that aggrieved consumers may file a complaint with INDECOPI even if they have not communicated with or submitted a complaint to the supplier. Administrative proceedings are therefore not the last resort but very often the first course of action for consumers who feel that their rights have been violated. This, along with other factors, has led to a significantly high level of administrative litigation in consumer relations.

4. Collective action on behalf of consumers

Title VI of the Consumer Code details the types of action that may be brought to protect consumers whose rights have been collectively or indirectly violated. Such actions may be pursued either through the administrative channel, before INDECOPI, or through the judicial channel, before the courts. Consumer associations "duly recognized" by INDECOPI are also empowered to bring collective

action via the administrative channel. Contrary to the provisions of other bodies of Peruvian law, such as the law governing administrative litigation,²¹ the Code does not accord standing to bring collective action to individual consumers, whether they are natural or legal persons.

Both INDECOPI and consumer associations are empowered to bring collective action before the courts, but consumer associations require prior approval from INDECOPI to be able to do so. To obtain this approval, an association must be recognized, and “must be sufficiently representative and have a recognized track record”. This requirement for prior approval may have contributed to the fact that, to date, very few associations have gone to court.²² Other possible contributing factors are a lack of expertise in the judicial processes involved and insufficient human and financial resources. These shortcomings contribute to the institutional weakness of consumer associations.

As is common in most jurisdictions, only the courts are competent to award damages to consumers. An opt-out model²³ has been selected under the Code, whereby consumers are part of a collective action unless they take specific steps to exclude themselves within 30 days.

Despite the existence of exhaustive rules governing collective consumer actions in courts, there have been no such cases in practice. This can be explained by the effectiveness of the adjudicative bodies within INDECOPI, which has probably dissuaded consumer associations from going to court. This would not be negative were it not for the fact that decisions regarding damages fall within the exclusive competence of the courts, and the courts have yet to make any such decisions. In other systems, including those of Chile and the United States of America, courts play a significant role in protecting consumers’ common or collective rights. One of the factors that have contributed to this situation is that the rules for granting standing to file suit to both consumer

associations and consumers organized on an ad hoc basis are more flexible.

5. National Integrated Consumer Protection System

Title VII of the Consumer Code provides for the establishment of the National Integrated Consumer Protection System, which is a set of principles, rules, procedures, techniques and instruments designed to harmonize public policies and optimize the activities of all relevant State authorities. The System is administrated by the National Consumer Protection Council, a coordinating body attached to the Office of the President of the Council of Ministers and chaired by INDECOPI in its capacity as the National Consumer Protection Authority. The National Consumer Protection Council, which does not have separate legal personality, is composed of representatives from six Ministries (Production; Health; Transportation and Communications; Education; Housing, Construction and Sanitation; and Economy and Finance), agencies (the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators) and sectoral regulators, regional and local governments, consumer associations, trade associations and the Ombudsman’s Office (as an observer). The Peruvian legislature has thus designated INDECOPI as the focal point and lead agency for matters relating to consumer protection (see figure III.3).

The National Council for Consumer Protection promotes and coordinates the National Consumer Protection Policy and the National Consumer Protection Plan, which are the cornerstones of Peruvian public policy on consumer affairs and are described in detail in the next chapter. It also makes recommendations regarding the prioritization of measures and norms in specific consumer sectors, issues opinions, raises awareness of consumer protection, encourages the establishment of product and service safety alerts systems, evaluates the effectiveness of mechanisms for the prevention and resolution of disputes, channels communications between the public and private sectors and promotes citizen participation.

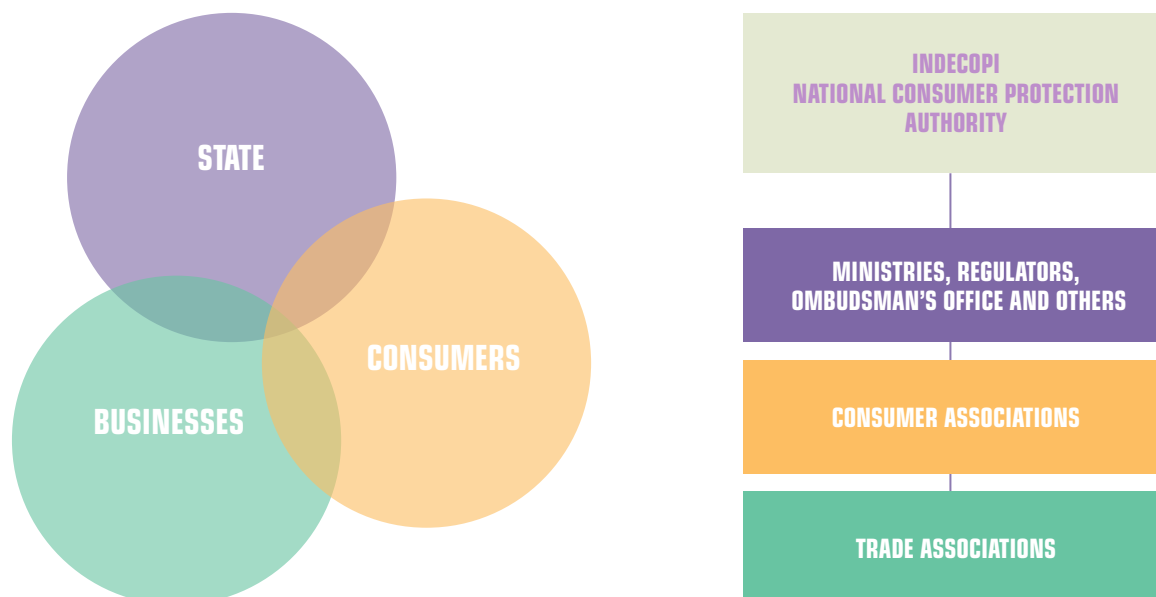
INDECOPI has been assigned the role of National Consumer Protection Authority and, as such, is responsible for ensuring compliance with the Consumer Code. Its duties include implementing the National Consumer Protection Policy and the National Consumer Protection Plan, proposing

²¹ Consolidated Text of Act No. 27584 on Administrative Litigation, approved under Supreme Decree No. 011-2019-JUS. Available at <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-aprueba-el-texto-unico-ordenado-de-la-le-decreto-supremo-n-011-2019-jus-1766381-1/?fbclid=IwAR1i737ooWOVxAhGxHsjuP7a5FtAky99Wd88hCeHF7bxmT8c3jdvBPmL9-A>.

²² According to INDECOPI, this has happened only once.

²³ TD/B/C.I./CPLP/11.

Figure III.3
Structure of the National Integrated Consumer Protection System



Source: INDECOPI.

rules on consumer affairs, developing and carrying out measures to strengthen consumer protection, implementing dispute prevention and resolution mechanisms, implementing the consumer information and advice system, coordinating the implementation of the product and service safety alerts system, preparing the annual report on the state of consumer protection and coordinating, leading and issuing the rules governing the National Integrated Consumer Protection System. INDECOPI, as the Peruvian consumer protection agency, is the main subject of this report and will be discussed in greater detail in Chapter V.

Consumer justice, which encompasses consumer arbitration, alternative dispute resolution mechanisms and complaints books, forms part of the National Integrated Consumer Protection System. The consumer arbitration rules are based on the Spanish model,²⁴ and arbitration is thus free of charge and legally binding. Arbitration services are available throughout the national territory, through regional and local governments, public entities and legal persons, or INDECOPI's offices, and are tripartite in nature,

involving suppliers, consumer associations and public authorities. The consumer arbitration system was created under the Consumer Code in 2010. Its initial regulations were adopted in 2011, by Supreme Decree No. 046-2011-PCM, and, in 2016, a pilot consumer arbitration board entered into operation. The recently adopted Supreme Decree No. 103-2019-PCM, of 29 May 2019, strengthens the legal framework, so any attempt to evaluate it at present would be premature. The alternative dispute resolution mechanisms provided for in the Code are complemented by conciliation and mediation. While the former can be initiated before or during administrative proceedings, the latter is available only prior to administrative proceedings.

Drawing on successful experiences in several Ibero-American countries, the Consumer Code also provides for the keeping of a complaints book. This is an internal review mechanism that all businesses are required to make available to consumers upon request, in physical or virtual form, so that they can submit complaints or claims.²⁵ Suppliers may choose

²⁴ See www.mscbs.gob.es/consumo/resolucionConflictos/sistemaArbitral/home.htm.

²⁵ INDECOPI, *Libro de Reclamaciones - Código de Protección y Defensa del Consumidor*. See www.indecopi.gob.pe/libro-de-reclamaciones.

Figure III.4
Consumer arbitration logo



to resolve such claims or complaints immediately, and are in all cases required to respond in writing within 30 calendar days. The information contained in a company's complaints book must be forwarded to INDECOPI upon request for auditing purposes. Businesses whose annual revenue exceeds 3,000 tax units are required to report complaints through the Complaints Reporting System. These provisions are supplemented by Supreme Decree No. 006-2014-PCM of 23 January 2014. Complaints books serve a general preventive function and empower consumers, as suppliers have an incentive either to acquiesce or conciliate while the dispute is ongoing rather than risk proceedings later.

Consumer associations, whose purpose is to protect, defend, inform and represent consumers, are also regulated within the framework of the National Integrated Consumer Protection System. The relevant regulations of the Consumer Code are in line with the United Nations guidelines for consumer protection, which recommend that consumer associations should be independent.²⁶ The regulations are also consistent with the conditions for the admission of consumer groups to Consumers International,²⁷ namely, that consumer associations must not be for-profit, must not receive funding from suppliers and must be without political affiliation. INDECOPI recognizes the consumer associations that have been entered in a special registry governed by Resolution No. 283-2013-INDECOPI/COD, of 15 November 2013, of the Office of the President of the Governing Board of INDECOPI.

The Consumer Code allows only one means of funding for consumer associations, namely, the collection of

a percentage of the amounts raised through fines imposed by INDECOPI and sectoral regulators in proceedings brought at their initiative. This percentage may not exceed 50 per cent of the amount of the fine and must be used for activities that promote and defend the interests of consumers. Only 5 per cent may be used to cover operating costs. These strict funding rules are at least partly responsible for the consumer associations' litigation-based business model, which is based on the collection, in addition to the percentage of fines set in the Code for the consumer associations, of the legal fees and expenses awarded in administrative penalty proceedings. A more detailed analysis of the work of consumer associations in Peru is provided in chapter VI.

Lastly, the Consumer Code expressly establishes that the State must promote product and service quality, encouraging standardization through the Peruvian technical standards. However, this issue is beyond the scope of this report.

B. OTHER RELEVANT LEGISLATION

As previously mentioned, the principle of speciality is applied comprehensively in the area of consumer protection, reflecting the cross-cutting nature of consumer protection policy. The Consumer Code cross-references several laws, mainly involving sectors regulated under Title IV.

The Code makes explicit reference to several laws that have an impact on consumer protection, namely: Legislative Decree No. 1044, the Prevention of Unfair Competition Act; Act No. 27332, the Framework Law on Bodies regulating Private Investment in Public Services; Act No. 26842, the General Health Act; Act No. 29203, the Act establishing the Information Hub for Real Estate Developers and/or Home Building Companies; Act No. 28587, supplementing the Consumer Protection in Financial Services Act; Act No. 26702, the General Act on the Financial and Insurance Systems and Organic Act establishing the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators; Act No. 30200, the Act promoting the provision of appropriate assistance for the public in shopping centres; Act No. 27444, the General Administrative Proceedings

²⁶ United Nations guidelines for consumer protection, chap. I (Objectives), para. 1 (e).

²⁷ Consumers International is the membership organization for consumer groups around the world. It gives a voice to consumers in international policymaking forums and the global marketplace to ensure they are treated safely, fairly and honestly. Consumers International describes itself as resolutely independent, unconstrained by businesses or political parties. See www.consumersinternational.org/.

Act; Act No. 29465, the State Budget Act for 2010;²⁸ and Act No. 28411, the General Act on the National Budget System. In addition to the topics covered by the laws explicitly mentioned in the Code, the United Nations guidelines for consumer protection address the following areas related to consumer protection: competition law; the provision of sanitation services; the supply of pharmaceutical products and energy; and data protection. The relevant Peruvian laws addressing these issues are:²⁹ Legislative Decree No. 1034, the Prevention of Anticompetitive Conduct Act; Legislative Decree No. 1280, the Framework Law on the Management and Provision of Sanitation Services; Legislative Decree no. 25844, the Electricity Concessions Act; and Act No 29733, the Personal Data Protection Act.

The Code establishes an order of precedence for the laws on the basis of the principles of speciality and supplementarity. In other words, the Code is the basic law on consumer protection and the principles it sets out underpin the entire consumer rights protection framework. It also provides for sectoral regulations to expand on or adapt the rules to accommodate the needs of each sector. Where the regulations are silent, the Code applies on a supplementary basis.

While an analysis of all the special laws affecting consumer protection would be beyond the scope of the present exercise, since data protection was one of the areas identified as a priority for the voluntary peer review, Act No. 29733, the Personal Data Protection Act, will be discussed below.

Protection of consumer data

The United Nations guidelines for consumer protection briefly address the regulation of personal data protection, establishing “the protection of consumer privacy and the global free flow of information” as both a general principle and legitimate need.³⁰ In addition, the guidelines recommend that national policies encourage, inter alia, “consumer privacy and

data security”.³¹ More specifically, they recommend that businesses protect consumers’ privacy “through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of their personal data”.³²

Peru adopted Act No. 29733, the Personal Data Protection Act, on 3 July 2011 and built upon it in Supreme Decree No. 003-2013-JUS, by which the Act’s implementing regulations were adopted. The objective of this Act is to develop the fundamental right to the protection of personal data, which is recognized under article 2 of the Constitution; its scope therefore extends beyond the protection of consumer data. The Act is based on the principles of data subject consent, data bank security and the availability of resources allowing data subjects to assert their rights.

The National Data Protection Authority is part of the Ministry of Justice and Human Rights’ Directorate General for Transparency, Access to Public Information and Personal Data Protection. However, the provisions of the Consumer Code are fully applicable in the context of consumer relations, and INDECOPI is the only body competent to enforce compliance with these provisions. The areas of competence of the two entities are clearly delineated in the text of the law, but the situation is more complex in practice, as both the Directorate General and INDECOPI can receive complaints from consumers and impose sanctions.

INDECOPI runs a service through WhatsApp called “WhatsApp No Insista” (Stop Insisting) through which consumers can report to the consumer authority any businesses that do not abide by the principle of consent when marketing their products. Forty thousand reports were received through this medium in 2019, and the collaborative monitoring effort has resulted in 125 audits and 42 administrative penalty proceedings. The Directorate General, for its part, has already taken specific steps to facilitate consumers’ right of complaint.³³

As has been made clear above, from a legal perspective, the Consumer Code together with the

²⁸ Currently in force: Emergency Decree No. 014-2019, Public Sector Budget for Fiscal Year 2020. Available at https://cdn.www.gob.pe/uploads/document/file/425810/DU014_2019.pdf.

²⁹ UNCTAD, “World Consumer Protection Map”, contribution by Peru. Available at <https://unctadwcpm.org/docs/PER.pdf>.

³⁰ United Nations guidelines for consumer protection, chap. III (General principles), para. 5 (k).

³¹ Ibid. chap. V (Guidelines), section A, para. 14 (h).

³² Ibid. chap. IV. (Principles for good business practices), para. 11 (e).

³³ Ministry of Justice and Human Rights, *Registro de sanciones impuestas por la Autoridad Nacional de Protección de Datos Personales 2019*. Available at www.minjus.gob.pe/wp-content/uploads/2019/11/Cuadro-de-publicacio%CC%81n-de-Sanciones-ANPDP.pdf.

other special laws provide the backbone for a robust consumer protection system. The findings of this analysis are summarized below.

C. SUMMARY

The legislative framework for consumer protection is satisfactory in that it incorporates almost all the recommendations of the United Nations guidelines for consumer protection. The framework lays down both the rights and the obligations of market players, consumers and suppliers, and addresses potential cases of discrimination against consumers. The main instrument in the framework, the Consumer Code, is systematic and comprehensive, and sets forth the

interplay between its provisions and those of special laws. The Code also sets out rules on liability and sanctions for suppliers and on collective action to defend consumers' rights.

With respect to administrative penalty proceedings, there are areas in which improvements could be made with a view to reducing the use of litigation in consumer relations and accelerating proceedings, notably by placing the decision whether or not to grant a party's request to initiate administrative proceedings within the discretion of INDECOPI. Steps might also be taken to encourage recourse to the courts.

The country's robust legislative framework is complemented by a coherent public policy framework.

IV. PUBLIC POLICY FRAMEWORK

This chapter focuses on the most pertinent public policy instruments, namely the National Consumer Protection Policy and the National Consumer Protection Plan. When defining the scope of this study, consideration was given to the areas of interest expressed by Peru, the United Nations guidelines for consumer protection and other relevant international instruments that codify international best practices. For these reasons, the chapter includes a specific section on electronic commerce, as this is an area which, although not fully incorporated into the instruments mentioned, is one of the pillars of the United Nations guidelines.

According to the United Nations guidelines for consumer protection, consumer protection policies include the laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes of Governments, as well as private sector standards and recommendations that protect consumer rights and interests and promote consumer welfare.³⁴

Peru has two in-force instruments of particular importance: the National Consumer Protection Policy (2017-2020) and the National Consumer Protection Plan (2017-2020).³⁵ As indicated in the Consumer Code, both instruments were developed on INDECOPI's initiative, and have been submitted to and endorsed by the National Council for Consumer Protection and adopted by the Office of the President of the Council of Ministers. As these are the highest-ranking policy instruments, they will be the main focus of the present chapter.

A. NATIONAL CONSUMER PROTECTION POLICY

The National Consumer Protection Policy is a State policy that applies to all levels of government, has implications for stakeholders in the public, private and associative sectors, and must be adopted by the Office of the President of the Council of Ministers. The Policy, currently in its first iteration, covers the period 2017-2020. It is based on empirical information drawn

³⁴ United Nations guidelines for consumer protection, chap. II (Scope of application), para. 2.

³⁵ INDECOPI, National Consumer Protection Policy (see footnote 11 above).

from, inter alia, surveys and social studies conducted in urban areas that have yielded data on habits and skills, public awareness of rights, consumer experiences, claims and complaints, vulnerability and discrimination.

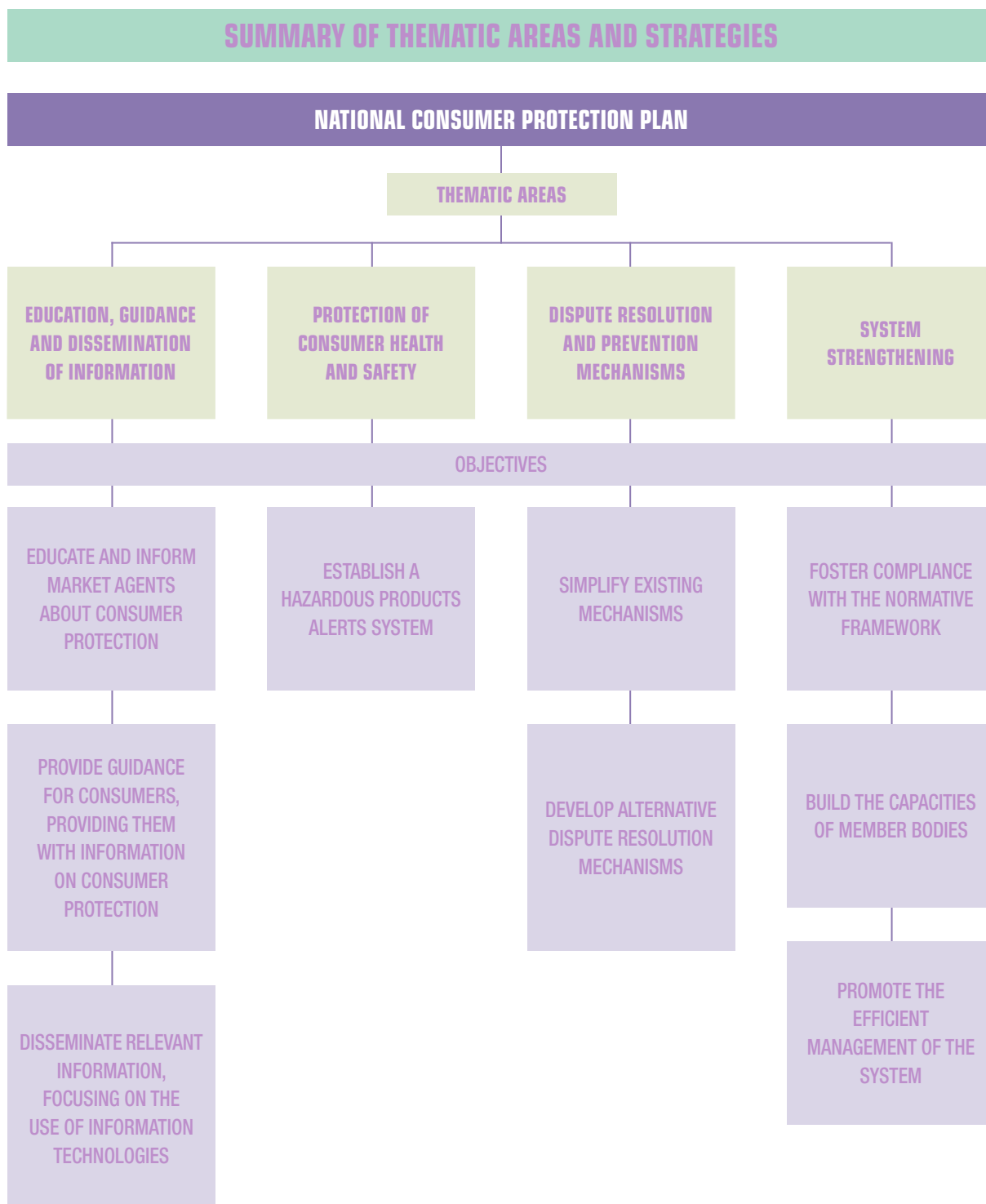
The National Consumer Protection Policy is structured around six principles that translate into four thematic areas: (a) education, guidance and dissemination of information; (b) protection of consumer health and safety; (c) mechanisms for the prevention and resolution of disputes between suppliers and consumers; and (d) strengthening the National Integrated Consumer Protection System. These lines of action are in turn broken down into a number of strategic guidelines, which are set forth in detail in the National Consumer Protection Plan.

B. NATIONAL CONSUMER PROTECTION PLAN

The National Consumer Protection Plan is an operational tool for the implementation of the National Consumer Protection Policy that also requires the approval of the Office of the President of the Council of Ministers. The current plan covers the period 2017-2020 and defines various indicators for measuring the progress made towards achieving the objectives set forth in the National Consumer Protection Policy. These objectives are reflected in figure IV.5.

There are certain areas not covered by the Consumer Code that are nonetheless of great importance to consumer protection. For example, one of the strategic lines of actions envisaged under the education, guidance and dissemination of information component of the Plan is the development and roll-out of an online system that gives consumers an easily accessible platform through which to find the information and tools that facilitate consumer decision-making. It is now clear that the impact of the digital economy extends beyond the scope of this line of action. For this reason, a separate section has been devoted to it in this report, within the analysis of the legislative and strategic framework.

Figure IV.5
National Consumer Protection Plan



Source: INDECOPI.

C. ELECTRONIC COMMERCE

Protecting consumers taking part in electronic commerce is a priority for most UNCTAD member States.³⁶ The United Nations guidelines for consumer protection, which are fully applicable both to electronic commerce and to traditional trade, contain explicit recommendations for protecting consumers in the digital economy.³⁷ The guidelines urge States to work to enhance consumer confidence in electronic commerce through the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce. States are also urged to review existing consumer protection policies to accommodate the special features of electronic commerce, with explicit reference to other international instruments, in particular the recommendations of the Organization for Economic Cooperation and Development (OECD), such as the Recommendation on Consumer Protection in E-commerce of 2016³⁸ and the Recommendation on Cross-Border Co-operation in the Enforcement of Laws against Spam of 2006.³⁹ It should be remembered that all recommendations regarding electronic commerce apply fully to the sharing economy.

INDECOPI presented its Digital Agenda in 2018. This document, which is informative in nature, was issued pursuant to Supreme Decree No. 066-2011-PCM, adopting the Plan for the Development of an Information Society in Peru: the Peruvian Digital Agenda 2.0.⁴⁰ The Plan sets out general objectives and strategies for ensuring that Peruvian society benefits from all aspects of the development of information and communication technologies. The INDECOPI Digital Agenda, for its part, offers guidelines for its areas of competence, including consumer protection, unfair

competition, intellectual property and bureaucratic barriers.

In the 2019 UNCTAD business-to-consumer electronic commerce index, which uses indicators of banking and Internet use to measure an economy's preparedness to support electronic commerce, Peru ranked 90th out of 152 countries.⁴¹ To strengthen consumer confidence and welfare in digital markets, Peru must continue developing its legislative and policy frameworks and implementing the recommendations contained in its Digital Agenda, the 2015 United Nations guidelines for consumer protection and the 2016 OECD Recommendation.

The United Nations guidelines for consumer protection stipulate that States should establish consumer protection policies that encourage:

- (a) Good business practices;
- (b) Clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them. This may include information such as the identity of the business, its legal name and the name under which it trades, its principal geographic address, website and e-mail address or other means of contact, its telephone number and its government registration or licence numbers;
- (c) Clear and timely information regarding the goods or services offered by businesses and the terms and conditions of the relevant transaction;
- (d) Clear, concise and easy to understand contract terms that are not unfair;
- (e) A transparent process for the confirmation, cancellation, return and refund of transactions;
- (f) Secure payment mechanisms;
- (g) Fair, affordable and speedy dispute resolution and redress;
- (h) Consumer privacy and data security;

³⁶ TD/B/C.I/CPLP/7.

³⁷ United Nations guidelines for consumer protection, chap. V (Guidelines), section I, paras. 63–65.

³⁸ OECD, 2016, *Consumer Protection in E-commerce: OECD Recommendation*. Available at www.oecd.org/sti/consumer/ECcommerce-Recommendation-2016.pdf.

³⁹ OECD, 2006, *Recommendation on Cross-Border Co-operation in the Enforcement of Laws against Spam*. Available at www.oecd.org/sti/ieconomy/oecdrecommendationoncross-borderco-operationintheenforcementoflawsagainstspam.htm.

⁴⁰ Peru, Office of the President of the Council of Ministers, *Plan de Desarrollo de la Sociedad de la Información en el Perú: La Agenda Digital 2.0* (2016). Available at https://cdn.www.gob.pe/uploads/document/file/357112/DS_066-2011.pdf.

⁴¹ UNCTAD, 2019, *B2C E-Commerce Index 2019: UNCTAD Technical Notes on ICT for Development*, No. 14, p. 7. Available at https://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d14_en.pdf.

(i) Consumer and business education.⁴²

In particular, INDECOPI might launch a drive to incorporate its case law and international best practices into the legislative and policy frameworks, including, notably, the following good practices set forth in the aforementioned OECD Recommendation:

- (a) Ensuring that security measures are implemented that are commensurate with payment-related risks, including those resulting from unauthorised access or use of personal data, fraud and identity theft;
- (b) Ensuring that the point at which consumers are asked to confirm a transaction, after which time payment is due or they are otherwise contractually bound, and the steps needed to complete the transaction, especially for new payment mechanisms, are clear and unambiguous;
- (c) Ensuring that existing provisions on advertising using new online practices such as personalized pricing, drip pricing and influencer endorsements are fully effective,⁴³ so that due regard is paid to the interests of consumers and businesses act in accordance with fair advertising and marketing practices;
- (d) Ensuring that there are satisfactory liability regimes for digital intermediaries, with lower levels of liability for intermediaries that merely display catalogues, products and services than for those that add value to the underlying good or service and exercise effective control over it;
- (e) Ensuring that the laws are effectively applied to suppliers (including digital intermediaries) that do not have a physical presence in the country;
- (f) Strengthening cross-border international cooperation in the enforcement of consumer protection laws.

A question of particular interest for Peru is how consumer protection provisions apply to the digital economy, especially the sharing economy. This is discussed in more detail in Chapter VI, section B, on the role of suppliers in consumer protection.

Ultimately, it is a matter of revisiting existing consumer protection policies and laws in order to accommodate the special features of electronic commerce and to ensure that, under the Consumer Code, consumers benefit from the same level of protection in electronic commerce as in traditional trade. One way to garner the necessary political support for consumer protection in electronic commerce is to incorporate it into high-level strategic plans, such as the country's Bicentennial Plan, so as to ensure that it is taken on board by all government bodies.

D. SUMMARY

The consumer protection policy framework in Peru is very broad, as policies have been prepared by numerous government entities with an interest in consumer protection. The key instruments are the National Consumer Protection Policy and the National Consumer Protection Plan, both of which are based on empirical studies conducted in urban areas. It could therefore be the case that they accord less attention to the rural population, which is likely to experience greater disadvantages as it is often more exposed to poverty. In addition, neither instrument takes account of the increasing importance of electronic commerce in consumer relations today.

The country's public policy framework is complemented by a dynamic institutional framework that fosters a culture of consumer protection, promotes consumer welfare and ensures rigorous application of policy instruments.

⁴² United Nations guidelines for consumer protection, chap. V (Guidelines), section A, para. 14.

⁴³ INDECOPI, 2019, *Guía de Publicidad para Influencers*. Available at www.indecopi.gob.pe/documents/1902049/3749438/Gu%C3%ADa+de+Publicidad+para+Influencers+VF+13.11.19.pdf/66da0113-9071-36a8-da91-a81d123c6a42.

V. INSTITUTIONAL FRAMEWORK

A. NATIONAL INSTITUTE FOR THE DEFENCE OF COMPETITION AND PROTECTION OF INTELLECTUAL PROPERTY (INDECOPI)

Consumer protection policy is cross-cutting in nature and requires the support of a range of institutions, both public and private, in order to be effective. While this report focuses on the main government consumer protection authorities, and in particular on INDECOPI, it also makes reference to the contributions of other public entities with responsibilities in the field of consumer protection.

INDECOPI is designated the principal government consumer protection authority under the Consumer Code. It has nationwide jurisdiction, is headquartered in Lima and has local offices in 24 regions of the country. Sectoral regulators act as consumer protection authorities within their areas of competence, but in most cases INDECOPI retains a general residuary jurisdiction.

As mentioned previously, INDECOPI has a particularly broad mandate that covers not only consumer protection but also free competition, intellectual property, bureaucratic barriers, unfair competition, bankruptcy proceedings, dumping and subsidies. In general terms, INDECOPI is governed by Decree-Law No. 25868 of 18 November 1992, but, in the area of consumer protection, it is also governed by the Consumer Code. INDECOPI has the power to submit legislative proposals through the Office of the President of the Council of Government Ministers, and, according to data drawn from the UNCTAD World Consumer Protection Map,⁴⁴ has an annual budget of \$10.5 million. In total, 529 employees are working full-time on consumer protection.

INDECOPI exercises its powers in the area of consumer protection in its capacity as the National Consumer Protection Authority. Since 2012, it has received support from the Directorate of the National Consumer Protection Authority for the coordination

and implementation of all those actions that allow it to fulfil its functions, including, in particular, for the implementation of the National Consumer Protection Policy and the National Consumer Protection Plan, which are described above.

To ensure that it is able to perform its duties to the full, INDECOPI has a network of dispute settlement bodies to deal with administrative proceedings at the first and second instance, and a separate body to deal with cases of misleading advertising.

As regards services common to all areas of INDECOPI, of particular importance for consumer protection are its Audit and Oversight Office, which is in charge of investigations, and its Regional Offices Administration Unit and Technical Cooperation and International Relations Office, which are responsible for coordination within the regions and internationally, respectively.

As regards strategic planning, INDECOPI has an institutional strategic plan, whose current iteration runs from 2018 to 2022,⁴⁵ and an institutional operational plan for 2019.⁴⁶ Both plans encompass INDECOPI's activities in all its areas of competence, including consumer protection, and establish objectives, lines of action and indicators for measuring impact.

A specific goal of the Institutional Strategic Plan 2018-2022 is to reduce the number of complaints filed by consumers. The Institutional Operational Plan for 2019 sets out how this objective is to be achieved, specifically by:

- (a) Ensuring that consumers and suppliers have sufficient information about rights and obligations in the field of consumer protection;
- (b) Resolving consumer protection cases in a timely manner;

⁴⁴ UNCTAD, World Consumer Protection Map, Peru's contribution (see footnote 29 above).

⁴⁵ INDECOPI, 2019, Institutional Strategic Plan 2018-2022. Available at www.indecopi.gob.pe/documents/1902049/3208389/PEI++EXTENSION+TEMPORALIDAD+2018-2022.pdf/f7f37c1b-4931-ef8a-c954-ab013d2c4016.

⁴⁶ INDECOPI, 2019, Institutional Operational Plan 2019. Available at www.indecopi.gob.pe/documents/20182/470728/POI+2019+aprobado+%281%29.pdf/ae06e581-8795-902c-bbcc-2c898764388f.

- (c) Developing alternative dispute settlement mechanisms;
- (d) Monitoring and verifying compliance with the rights and obligations of economic actors in the field of consumer protection.

Each year since 2012, INDECOPI has published an annual report on the state of consumer protection in Peru.⁴⁷ This is an exhaustive document which contains an analysis of the perceptions and expectations of economic actors with regard to consumer protection and summarizes the work of all the public institutions involved in consumer protection in Peru. The report also contains an analysis of public perceptions and expectations of economic agents with regard to consumer protection and an assessment of the activities undertaken by the National Integrated Consumer Protection System.

This first section on the institutional framework for consumer protection focuses on INDECOPI's main areas of activity, following the lines of action and strategies contained in the National Consumer Protection Policy and the National Consumer Protection Plan, which are in turn closely linked to the Institutional Strategic Plan and the 2019 Institutional Operational Plan. All these instruments are supplemented by the United Nations guidelines for consumer protection.

1. Participation in the legislative process

INDECOPI enjoys a position of privilege in the Peruvian legislative process as the principal national authority in matters of regulatory compliance and the lead agency of the National Integrated Consumer Protection System. Although INDECOPI is autonomous and operates independently from the executive branch, it has the power to propose legislative amendments for the consideration of the Office of the President of the Council of Ministers and is also consulted directly by Congress on draft legislation. In 2018, INDECOPI issued opinions on 59 pieces of draft legislation covering topics such as data protection, labelling, the financial and insurance systems, and the price of medicines.

This ability to influence laws and regulations is reinforced by the respect that INDECOPI commands within the executive and legislative branches both as a technical expert and as an institution. Though not always adopted, INDECOPI's opinions have a significant influence on legislative debates. As mentioned in the UNCTAD *Manual on Consumer Protection*,⁴⁸ the institution's public profile is a valuable asset, and maintaining this profile must remain a strategic priority.

2. Education, guidance and dissemination of information

In 2018 and 2019, the Directorate of the National Consumer Protection Authority of INDECOPI carried out various educational, advisory and awareness-raising initiatives to increase knowledge of consumer rights.

The Consumption Map⁴⁹ is one such initiative, and consists of an interactive document that provides a visual map of the various ways to submit claims and the entities that are competent to process these claims in the following sectors of the Peruvian market: water and sanitation; energy; transport infrastructure; pensions; products and services; health; and telecommunications. The Map is available in Spanish, Quechua, Aymara, sign language and Braille in order to ensure that vulnerable and disadvantaged consumers have access to guidance. The Map is particularly useful in view of the number of public institutions that are able to receive complaints from consumers, as it steers them towards the institutions competent to deal with their specific case. However, on the basis of the National Urban Survey on Consumer Protection conducted in 2019, it appears that, as a general rule, consumers are still unaware of the competencies of the different entities that make up the consumer protection system, and that the situation is thus still far from perfect. In the light of this finding, Peru should consider the possibility of developing a single digital portal through which all consumer claims and complaints can be submitted, thereby ensuring that they are channelled directly to the competent authority.

⁴⁷ INDECOPI, *Estado de la protección de los consumidores en el Perú* (2018). Informe Anual 2018. Available at www.indecopi.gob.pe/documents/51084/126949/Informe_Anuar_PC_2018_VF/2ab8e346-5339-686d-429d-6fa86bcf8f49.

⁴⁸ UNCTAD, *Manual on Consumer Protection* (see footnote 15 above).

⁴⁹ INDECOPI, *Mapa de Consumo, ¿dónde reclamar?* Available at www.indecopi.gob.pe/documents/51084/123333/Mapa_Consumo_Digital.pdf.

INDECOPI has also launched a number of sector-specific digital service comparison tools. These include the “Checa tu Taxi” (Taxi Checker),⁵⁰ “Checa tu Aerolínea” (Airline Checker)⁵¹ and “Checa tu Uni” (University Checker)⁵² comparison tools, and provide consumers with information about service providers and the extent to which they comply with in-force regulations so as to enable them to make informed consumer choices. In addition, the online public portal named “Mira a quién le compras” (Check on the Seller)⁵³ provides information on the penalties imposed by INDECOPI on businesses and suppliers. Wide dissemination of this information can have a disciplining effect on suppliers’ market conduct. INDECOPI also organizes a hackathon on consumer protection for digital innovators, in which technological innovators, web developers and information technology and computer science students are challenged to come up with creative consumer protection solutions.⁵⁴ In the last iteration of the hackathon, for which 120 participants registered, the three best projects were awarded scholarships, licenses and internships related to technological innovation.

In 2018, INDECOPI organized training for 3,183 consumers on consumer protection; training for 820 service providers on the obligations of providers of tourism and other types of services, keeping complaints books, product safety, accommodation for persons with disabilities and food labelling, among other topics; and training for 127 suppliers on consumer arbitration. In the same year, INDECOPI launched various information campaigns on fuels, pharmaceutical products and electrical products.

INDECOPI has also developed an interactive consumer guide for micro- and small businesses,⁵⁵ designed

to enhance their understanding of their consumer protection obligations. The topics addressed in the guide include keeping complaints books, sales promotions, consumer alerts, consumer arbitration, trade associations and Internet sales (see figure V.6).

One particularly important initiative in the effort to reach out to vulnerable and disadvantaged consumers is INDECOPI’s “Todos somos consumidores” (We are all consumers) campaign, the aim of which is to protect and defend the rights of persons with disabilities by raising awareness of their rights. INDECOPI also broadcasts radio programmes,⁵⁶ such as *La fuerza del consumidor* (The power of the consumer), to inform listeners about their rights.

Another important point of note is that the consumer authority works not only to make consumers more aware of their rights but also to foster behavioural change and informed consumer decision-making. A noteworthy initiative to this end is the “Julieta checa la etiqueta” (Juliet checks the label) campaign,⁵⁷ which encourages consumers to make a habit of checking the information that appears in the octagonal boxes on food labels that indicate whether the product is high in salt, sugar or saturated fat and whether it contains trans-fatty acids. These boxes enable consumers to make more informed purchasing decisions, while at the same time contributing to the efficient functioning of the market. Efforts have also been made to make the various consumer protection bodies more visible to consumers, a total of 25 million advertising spots having been broadcast on digital platforms (portals and social networks), an audience of 13 million people having been reached through digital platforms and major cinemas, and a total of 8.1 million video views and/or plays having been recorded.

Lastly, INDECOPI has entered into an institutional alliance with the Ministry of Education whereby the latter, as part of efforts to implement the National Consumer Protection Plan, has included information about consumer protection in the printed materials distributed to grade 5 and 6 primary pupils and grade 4 secondary students. In addition, INDECOPI is spearheading an educational strategy whereby consumer protection issues are accorded greater attention in the educational materials used to teach

⁵⁰ INDECOPI, “Checa tu Taxi”. Available at www.indecopi.gob.pe/documents/51084/123333/Mapa_Consumo_Digital.pdf.

⁵¹ INDECOPI, “Checa tu Aerolínea”. Available at www.indecopi.gob.pe/documents/20182/3043340/Checa+tu+Aerolinea+ACTUALIZADO.pdf/a17ad81a-0670-4793-3563-697868e414ad.

⁵² INDECOPI, “Checa tu Uni”. Available at www.indecopi.gob.pe/documents/20182/3043340/Checa+tu+uni-2019-Indecopi-SUNEDU.pdf/142e304d-ac15-538f-f988-023f233d80ac.

⁵³ INDECOPI, “Mira a quién le compras”. Available at <https://servicio.indecopi.gob.pe/appCPCBuscador/>.

⁵⁴ INDECOPI, Hackathon on consumer protection. Available at www.consumidor.gob.pe/hackathonconsumo.

⁵⁵ INDECOPI, Interactive Consumer Guide for Micro- and Small Businesses. Available at <https://enlinea.indecopi.gob.pe/guiaconsumomype/>.

⁵⁶ Radio INDECOPI, see www.indecopi.gob.pe/radio-indecopi.

⁵⁷ INDECOPI, “Julieta checa la etiqueta”. Available at www.julietachecalatiqueta.pe/home.

Figure V.6
Portal of the Interactive Consumer Guide for Micro- and Small Businesses



Source: INDECOPI.

various skills to schoolchildren. This strategy will require a coordinated, awareness-raising effort, working closely with teachers, in the initial stages in Lima.

As is clear from this range of activities, as an institution INDECOPI is very active in providing education, guidance and information about consumer protection. It has succeeded in forging alliances with other public entities while at the same time taking advantage of the immense opportunities offered by digital platforms. As a result, it offers a very effective response to the needs of city dwellers and better-educated segments of the population. However, INDECOPI still has room to improve the educational, advisory and awareness-raising activities that are targeted at vulnerable and disadvantaged consumers, especially people living in poverty and the rural population.

As stated in the United Nations guidelines for consumer protection, “Member States should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and

people living in poverty.”⁵⁸ According to data from the National Institute for Statistics and Data Processing, in 2018, 20 per cent of the population of Peru was living in poverty, with this figure rising to 44 per cent in rural areas.⁵⁹ For this reason it is important that the poor and rural population be considered as potentially or actually vulnerable or disadvantaged, as the case may be, and that targeted action be taken to address their needs.

INDECOPI has a network of regional offices for this purpose and also has the possibility of forging new alliances with the Ministry of Education, the National Anti-Discrimination Committee, the municipalities and the private sector. A source of inspiration can be found in initiatives undertaken by the energy and mining sector regulator, the Energy and Mining Investment Supervisory Authority, such as the “Tukuy rikuy” multilingual tool, through which consumers can report electricity power cuts by free text message,

⁵⁸ United Nations guidelines for consumer protection, chap. III (General principles), para. 8

⁵⁹ National Institute for Statistics and Data Processing, poverty statistics 2018. Available at www.inei.gov.pe/estadisticas/indice-tematico/poverty/.

and “Osimóvil”, a mobile office that disseminates information in rural areas.

3. Protection of consumer health and safety

As well as in the Consumer Code’s implementing regulations, Peru’s policy on consumer health and safety is fleshed out in Supreme Decree No. 050-2016-PCM, establishing the procedure for issuing warnings and alerts of unforeseen risks related to products and services placed on the market that may affect the health and/or safety of consumers, and Resolution of the President of the Governing Board of INDECOPI No. 164-2016-INDECOPI/COD, concerning the form to be used to inform INDECOPI of products or services that carry unforeseen risks. In view of the cross-cutting nature of consumer health and safety issues, a number of sector-specific authorities in Peru have also been empowered to issue warnings about consumer products and services. These include the Directorate General for Environmental Health and Food Safety,⁶⁰ the Directorate General for Medicines, Medical Supplies and Drugs,⁶¹ the National Fishing Sanitation Body⁶² and the Ministry of Production,⁶³ which regulates fishing, aquaculture, and micro- and small businesses and industries.

Peru’s experience in health and safety matters and its activities at the regional level led it to work with other Latin American countries to establish the Organization of American States (OAS) Consumer Safety and Health Network,⁶⁴ of which Peru is a founding member. INDECOPI operates a hazardous products and services alerts system,⁶⁵ which includes a system for monitoring the number of accidents caused by consumer products on the basis of reports from medical clinics and hospitals.

According to data for the last five years, the number of product recall campaigns has been on an upward trend, but there is still room for greater transparency in the marketplace, especially if we compare data from

Peru with data from Australia, for example, where 697 recalls were requested in 2019.⁶⁶

Table V.1
Alerts issued and number of units affected, 2012–2019

| Year | Alerts issued | Units affected |
|--------------|---------------|------------------|
| 2012 | 5 | 705 |
| 2013 | 19 | 24 650 |
| 2014 | 38 | 183 878 |
| 2015 | 33 | 49 280 |
| 2016 | 35 | 66 277 |
| 2017 | 81 | 1 902 293 |
| 2018 | 92 | 145 852 |
| 2019 | 66 | 52 695 |
| Total | 369 | 2 425 630 |

Source: INDECOPI.

Accordingly, with a view to refining policy for protecting consumer health and safety, and to take account of economic growth and the importance attached to consumer welfare, the issue was made action line No. 2 in the National Consumer Protection Plan for the period 2017–2020.⁶⁷ This action line includes both ex ante actions, linked to self-regulation, and ex post actions, entailing market monitoring to prevent the sale of products and/or provision of services that pose a risk to the life, health and safety of consumers. The specific activities envisaged under this action line are: (a) the formulation of a new normative framework for identifying risks and issuing alerts at INDECOPI; (b) the development and roll-out of a computer system for issuing alerts for hazardous products and services at INDECOPI; and (c) the design and implementation of a hazardous products and services alerts system.

4. Protection of consumers’ economic interests, dispute resolution and redress

Peru has a robust system for protecting economic interests, which is in line with the United Nations guidelines for consumer protection. INDECOPI fulfils this function by means of administrative penalty proceedings and investigations, which discourage practices that are harmful to consumers and violate the provisions of the Consumer Code besides protecting

⁶⁰ See www.digesa.minsa.gob.pe.

⁶¹ See www.digemid.minsa.gob.pe.

⁶² See www.sanipes.gob.pe/web/index.php/es/.

⁶³ See www.gob.pe/produce.

⁶⁴ OAS, Consumer Safety and Health Network. See www.oas.org/es/sla/rcss/sobre_rcss.asp.

⁶⁵ See www.alertasdeconsumo.gob.pe.

⁶⁶ Australian Competition and Consumer Commission, Consumer Product Recall Portal. See www.productsafety.gov.au/recalls/browse-all-recalls.

⁶⁷ INDECOPI, National Consumer Protection Policy (see footnote 11 above).

consumers' interests. Working in conjunction with other State institutions, INDECOPI also promotes dispute resolution mechanisms, especially alternative and extrajudicial mechanisms, and encourages businesses to settle disputes without external mediation on a voluntary basis. However, ruling on redress for consumers remains the preserve of the judicial authorities and arbitration boards. The legal basis for the exercise of these powers is contained in the Code, as mentioned above. This section is divided into subsections on investigations, administrative procedures for dealing with complaints and claims, conflict resolution and collective actions.

(a) Investigations

The Audit and Oversight Office and regional offices of INDECOPI share responsibility for oversight in the areas of competition, consumer protection and intellectual property. This responsibility is delegated to them by INDECOPI's claims settlement bodies. In 2018, they carried out 1,405 inspections, some of them in conjunction with other institutions such as ministries, municipalities or the public prosecution service. The Annual Oversight Plan for 2019⁶⁸ contains a schedule for INDECOPI's audit activities and is guided by the following principles: (a) risk-based approach; (b) impact monitoring; and (c) efficient resource utilization.

Both scheduled audits, which make it easier for market agents to plan and give them greater legal certainty, and special audits in response to crises or situations not previously envisaged are included in the annual oversight plan. INDECOPI examines the likelihood of non-compliance in specific sectors and the potential magnitude of the detriment in order to assess the risk, and on this basis decides which sectors it should audit, taking into account the resources needed. The consumer policy toolkit⁶⁹ developed by OECD can be used to identify those areas on which audit activities should focus. The toolkit specifies criteria for measuring consumer detriment and indicators and procedures that authorities can use in audits. These criteria set out in the toolkit could prove useful for INDECOPI's audit activities.

⁶⁸ INDECOPI, Annual Oversight Plan 2019. Available at www.indecopi.gob.pe/documents/1902049/3749566/PAS+2019.pdf/18df85e0-ba43-29dc-527a-0f41e353859c.

⁶⁹ OECD, 2010, consumer policy toolkit. Available at www.oecd.org/sti/consumer/consumer-policy-toolkit-9789264079663-en.htm.

Audits may give rise to ex officio administrative penalty proceedings before a specialist committee at INDECOPI. In 2018, this committee ruled on 117 such proceedings. In 2019, INDECOPI estimated that its audit activities in the field of consumer protection prevented a consumer detriment and/or unlawful gain in the amount of \$2.5 million.

In order to ensure an equivalent level of protection in electronic commerce and traditional trade, a number of countries have chosen to establish one or more specialized units for monitoring electronic commerce, and INDECOPI might also take this approach; in any case, it should continue to invest in ongoing training for officers involved in cases related to the digital environment.










(b) Complaints and claims

There is an established culture of complaint in Peru. Aggrieved consumers may submit a claim either to INDECOPI or to the regulatory body responsible for the specific sector, i.e. banking and insurance, energy, telecommunications, transport or sanitation. The procedures in place in each of these institutions may differ in terms of admissibility criteria, deadlines and evidentiary requirements, among other factors. The diversity of procedures is understandable given that powers and competencies are shared between various bodies, but from the consumer's point of view it can be confusing. To make procedures easier for consumers to understand, Peru might consider the possibility of harmonizing the administrative procedure for all disputes between consumers and businesses, whether or not the sectors in which they operate are regulated. Another option, which does not preclude the previous one, would be to centralize the various complaints mechanisms in a single online interface that would serve as a "one-stop shop" for submitting complaints to any of the participating public entities.

An important difference between procedures initiated before INDECOPI and those initiated before regulatory bodies is that, for the latter, the consumer concerned must, as a condition of admissibility, have first lodged a complaint directly with the business in question (see figure V.7), so giving the business the opportunity to reach an agreement or compromise before administrative proceedings are initiated. In administrative proceedings before INDECOPI, on the other hand, prior communication with the business is not a prerequisite; consumers can file

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**Figure V.7
Conflict resolution systems and administrative procedures**

| | Economic sector or activity | Who should I contact first? | If I'm not satisfied with the response, who should I contact next? |
|--|---|--|--|
| Regulated sectors | Telecommunications | Submit a complaint to the service provider (first instance) |  Administrative Court for the Resolution of User Complaints |
| | Public transport infrastructure (including electric train in Lima) | |  Dispute Resolution and Claims Administration Court |
| | Drinking water and sanitation services | |  Administrative Claims Court |
| | Public electricity and natural gas services | |  User Complaints Appeals Board |
| Under oversight of the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators | Private pensions | Submit a complaint to the service provider | First instance: Citizens' Advice Department Second instance: Office of the Deputy Superintendent of Pension Fund Administrators |
| Under oversight of the National Health Authority | Health-care services and health insurance funds | Submit a complaint by filling out the Health Service Complaints Book kept by health insurance fund administrators, institutions that provide health-care services or their administration offices Submit a complaint to the National Health Authority |  National Health Authority Tribunal |
| Others | Electrical equipment, clothes, footwear, auto industry, furniture, food, education, professional services, tourism services, financial and insurance services, other services |  File a complaint with the INDECOPI Citizens' Advice Service ^a |  Lodge an appeal |
| | |  File a complaint (administrative procedure) with INDECOPI | |
| | |  Submit a request for arbitration to the Consumer Arbitration Board | |

^a Submitting complaints to the INDECOPI Citizens' Advice Service is an alternative administrative procedural mechanism that does not have a second instance.

Prepared by: Directorate of the National Consumer Protection Authority – INDECOPI.

Source: INDECOPI.

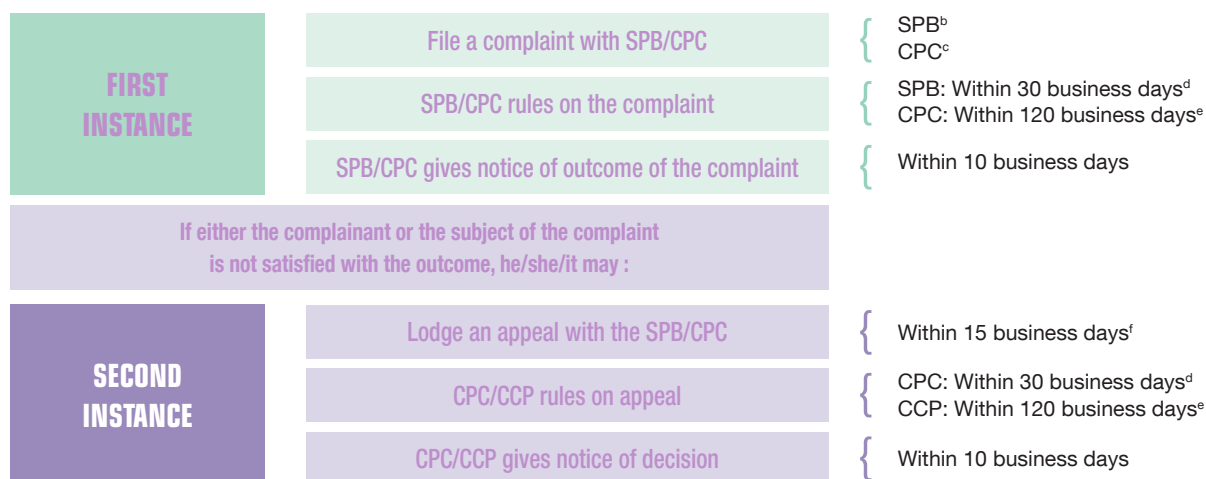
their complaint without having previously attempted to resolve their grievance directly with the business. According to INDECOPI's calculations, 20 per cent of the claims it receives could be prevented if the consumer had first addressed his or her complaint to the business concerned. Thus, in order to reduce the use of litigation, Peru might consider introducing a requirement for consumers to have first lodged a complaint directly with the business (and for the latter to have been given a reasonable time to respond) as an additional admissibility criterion for claims pursued in administrative proceedings before INDECOPI.

Consumers who seek recourse before INDECOPI can find guidance on procedures, services and the formalities to be completed through its Citizens' Advice Service. Available in both the Lima offices and the 24 regional offices, in 2018 this Service provided guidance to 384,800 persons and registered around 58,600 complaints. The Service also channels consumers towards alternative dispute resolution

mechanisms, which are described below. In those cases where it proves impossible to resolve the dispute, the Consumer Code provides for one of two administrative procedures to be pursued in the first instance, depending on the amount and type of the claim and the deadline for settlement: (a) the summary procedure, used for disputes over products or services with a value of less than \$3,550 and claims related to technically straightforward issues, such as delays in delivery or information requests, that have a deadline for settlement of 30 business days; and (b) the ordinary procedure, used for disputes over products or services with a value of more than \$3,550 and claims related to hazardous products, acts of discrimination, medical services or acts affecting collective or general public interests, that have a deadline for settlement of 120 business days. It is important to emphasize that the parties can reach an agreement at any time during the proceedings, and that INDECOPI offers a period of conciliation prior to commencing the penalty proceedings (see figure V.8).

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**Figure V.8
Administrative procedure for complaints submitted to INDECOPI^a**



Source: IDECOPI, *Estado de la protección de los consumidores en el Perú* (2018). *Informe anual 2018*, page 26.

CPC: Consumer Protection Committee; **SPB:** Summary Procedure Adjudicatory Body; **CCP:** Specialized Chamber for Consumer Protection.

- a Figures given are maximums.
- b The SPB is the competent body in the following situations: (a) when the value of the product or service does not exceed three tax units; (b) when the complaints relate to information requests, abusive payment collection methods and delays in product delivery; and (c) in the first instance, in the case of complaints related to a failure to comply with conciliation agreements, failure to take correction action, the settlement of fees and expenses, failure to pay fees and expenses, failure to respond to complaints and failure to deliver products.
The summary procedure may involve two instances: the first before the SPB; the second, on appeal, before the CCP.
- c The CPC is the competent body when the complaints involve: (a) claims related to hazardous products or substances; (b) acts of discrimination or differential treatment; (c) acts that affect collective or common interests; and (d) acts related to products or services that have an estimated value in excess of three tax units or a value that cannot be quantified in money terms.
- d The deadlines for summary proceedings (SPB in the first instance, CCP in the second instance) are set in article 126 of the Consumer Code and in the Consolidated Text of the Directive adopting the summary consumer protection procedure provided for under the Consumer Code.
- e The deadlines for ordinary proceedings (CPC in the first instance and CCP in the second instance) are set in the fourteenth final provision of the General Act on the Complaints System.
- f Deadline amended by Legislative Decree No. 1272, published in *El Peruano* on 21 December de 2016.

Decisions handed down through any of the aforementioned channels may be appealed before a second and final administrative instance before being pursued before the Specialized Chamber for Consumer Protection. The Specialized Chamber's decision may in turn be appealed before the administrative courts. The Chamber's rulings do not always have precedent value for the lower-instance bodies - a situation that may prevent uniform application of its case law, and is rendered even more complex by the fact that the first-instance decision-making bodies are located in the regional offices of INDECOPI, and thus spread across

the country. The Consolidated Text of the General Administrative Procedure Act⁷⁰ does, however, provide that the decisions of second-instance administrative bodies set precedents for the lower-instance bodies. Accordingly, the Chamber may issue decisions that are binding on lower-instance bodies, but it avails itself of this possibility only occasionally. In order to make decisions easier to predict, create greater

⁷⁰ Consolidated Text of General Administrative Procedure Act No. 27444, adopted by Supreme Decree No. 004-2019-JUS. Available at <https://elperuano.pe/NormasElperuano/2019/01/25/1734669-1/1734669-1.htm>.

legal certainty for market agents and harmonize interpretation criteria, it would be a good idea for all of the Chamber's decisions to be binding. It would also be a good idea to invest in increasing awareness of the Chamber's interpretative criteria among the lower-instance decision-making bodies by means of specific communication and training initiatives.

All administrative proceedings at INDECOPI require the support of a complex technical and administrative network. To allow for specialization among the officials who deal with complaints, at its Lima headquarters INDECOPI has set up three consumer protection committees and three dispute settlement bodies to handle summary consumer protection proceedings. These are supplemented by the regional offices' committees and summary procedure dispute settlement bodies.

Proceedings-related notifications must be issued in hard copy form, and must be served by staff with legal training. In addition, the proceedings must include at least one oral, face-to-face hearing. These requirements create a need for considerable human resources and have a high financial cost for INDECOPI, estimated at \$1,200 per procedure. One means of containing the cost of administrative proceedings would be to allow some of them to be handled by single-person settlement bodies. Another option would be to abridge the proceedings, for example, by allowing decisions to be issued orally.

The main reason for the prevalence of litigation at INDECOPI, however, is the need to institute administrative proceedings for every claim or complaint that is received from consumers. In other words, INDECOPI has no discretion to decide whether or not to institute penalty proceedings. The rationale for this lack of discretion was the desire to ensure that every consumer complaint received due consideration, especially since, at the time, alternative dispute resolution methods – namely, mediation, conciliation and arbitration – were not as effective as they are today. But the situation now is different, in that consumers seeking to assert their rights have access to various possible course of actions. If INDECOPI had discretion to decide which course of action was most appropriate, and to choose either to refer consumers to alternative dispute resolution mechanisms or to initiate penalty proceedings itself, it could redistribute its resources in favour of important cases affecting collective or common interests that have a far greater

impact in terms of preventing unlawful conduct on the part of businesses in general. This is the model that has been adopted in the United States of America, which is, as a result, the country where damage awards to consumers are highest, with a record payout of \$14.06 billion.⁷¹ In order to ensure that any discretion granted did not become arbitrary, it would be necessary to set objective decision-making criteria while at the same time strengthening the judicial and alternative mechanisms through which the consumers concerned could obtain satisfaction.

In order to ease the workload of its dispute settlement bodies and at the same time improve consumer welfare, INDECOPI is already promoting the most efficient and least costly conflict resolution channels. However, there is still room to begin using collective actions to defend consumer rights.

(c) Conflict resolution

In accordance with the recommendation to provide consumers with access to remedies that do not impose costs, delays or undue burdens on the economic value at stake or on society and businesses that is contained in the United Nations guidelines for consumer protection, Peru has been developing alternative conflict resolution mechanisms, whereby an impartial third party, whether public or private, intervenes to settle a dispute between consumers and businesses. Figure V.9 shows the conflict resolution mechanisms overseen by INDECOPI, with the associated deadlines and costs and the possibilities of compensation for consumers they offer. Currently, 35 per cent of cases brought to conclusion by INDECOPI are resolved using alternative conflict resolution methods.⁷²

In line with trends internationally, Peru has a considerable range of alternative conflict resolution mechanisms. As noted in one study,⁷³ alternative dispute resolution systems enhance access to justice and the application of the law whenever a person uses such a system to raise a consumer to business claim “rather than do nothing about it because they








⁷¹ UNCTAD, World Consumer Protection Map, Contribution by the United States of America. Available at <https://unctadwcpm.org/docs/USA.pdf>.

⁷² INDECOPI, 2019, Report on Institutional Statistics 2019, page 5 Available at www.indecopi.gob.pe/documents/1902049/3387871/II+Trimestre+2019.pdf/a9544285-a2f3-f4ec-44c7-bba1b3344a09.

⁷³ TD/B/C.I/CPLP/11, para. 25.

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**Figure V.9
Conflict resolution mechanisms**

| | Deadline | Cost | Compensation |
|--|---|--|---------------------|
|  RECLAMA VIRTUAL online platform |  5-15 BUSINESS DAYS | FREE OF CHARGE | NO |
|  ALO telephone service |  7-15 BUSINESS DAYS | FREE OF CHARGE | NO |
|  Trade associations |  15-30 BUSINESS DAYS | FREE OF CHARGE | NO |
|  Complaints books |  30 BUSINESS DAYS | FREE OF CHARGE | NO |
|  Consumer arbitration |  45 BUSINESS DAYS | FREE OF CHARGE | YES |
|  Summary complaints procedure^a |  30 DAYS FIRST INSTANCE + 30 DAYS SECOND INSTANCE = 60 CALENDAR DAYS |  36.00 soles | NO |
|  Ordinary complaints procedure^a |  120 DAYS FIRST INSTANCE + 120 DAYS SECOND INSTANCE = 240 CALENDAR DAYS |  36.00 soles | NO |

a Summary procedure: when the value of the product or service is less than three tax units; Ordinary procedure: when the value of the product or service exceeds three tax units. For further information, visit the INDECOPI web page at: www.indecopi.gob.pe.

Source: INDECOPI.

do not have time or think that a court or a lawyer would just not be worth it".⁷⁴ In 2018, UNCTAD delineated the quality criteria against which dispute resolution mechanisms, and especially alternative mechanisms,⁷⁵ might be evaluated and regulated, in line with the United Nations guidelines for consumer protection and the 2007 OECD Recommendation on Consumer Dispute Resolution and Redress.⁷⁶

⁷⁴ C Hodges, 2016, Consumer redress: implementing the vision, In: P Cortés, The New Regulatory Framework for Consumer Dispute Resolution, Oxford University Press, Oxford: 351–369. 15

⁷⁵ TD/B/C.I./CPLP/11, para. 43.

⁷⁶ OECD, 2007, Recommendation on Consumer Dispute Resolution and Redress. Available at www.oecd.org/sti/ieconomy/38960101.pdf.

One of the alternative dispute resolution mechanisms used in Peru is consumer arbitration. The arbitration system is established in the Consumer Code, as described above. Since arbitration tribunals are judicial bodies, their decisions are not subject to appeal and they can award compensation for damages and loss suffered by consumers. Businesses interested in using arbitration must join the consumer arbitration system, which entails agreeing to be subject to the jurisdiction of the arbitration tribunals and to respect their decisions. The organization of the arbitration system is the responsibility of arbitration boards composed of representatives of INDECOPI, regional and local governments, public-law legal entities and legal persons. The consumer arbitration system was

created in 2010 pursuant to the Code, but, because there have since been progressive advances in its implementation, it would be premature to venture an assessment of the system, especially when its new implementing regulations were adopted only in May 2019. As at the end of 2019, a total of 65 businesses had joined the consumer arbitration system, which received 138 requests for the initiation of arbitration in the course of that year.

Another alternative dispute resolution mechanism provided for in the Consumer Code is conciliation. In conciliation processes, either INDECOPI attempts to bring the positions of the parties closer into line so that they can reach an agreement themselves, or, alternatively, it proposes a formula for conciliation itself. INDECOPI routinely promotes the conciliation process before initiating administrative proceedings, since conciliation precludes the need for proceedings. However, the current system of financing consumer associations, based on the collection of a percentage of amounts raised through fines and sanctions to cover legal fees and expenses, is a disincentive for conciliation and encourages consumers and their representatives to pursue administrative proceedings instead.

The last alternative mechanism mentioned in the Consumer Code is mediation, whereby an impartial third party, which could be INDECOPI, facilitates a space for parties to exchange information and guides them towards a solution. This medium, which is still in its infancy, needs to be strengthened in practice.

INDECOPI has recently launched an online dispute resolution mechanism called “Concilia Fácil” (Easy conciliation).⁷⁷ This online platform facilitates communication by enabling consumers, suppliers and INDECOPI officials to communicate in real time, from any location - for example, from their home or office - using fixed or mobile devices, and makes it possible to hold virtual conciliation hearings.

The platform is particularly useful for cross-border cases in which a foreign consumer has purchased products and services from a business based in Peru, and is complemented by the “Reclama Virtual” (Virtual claims) tool.⁷⁸ It might also be useful for disputes

between Peruvian consumers and businesses that do not have a physical presence in Peru, although INDECOPI might have to adapt the current platform if it were to be used to resolve cross-border disputes over online transactions. INDECOPI may wish to conclude agreements with those countries with which it has more extensive trade relations in order to allow for this modality. Peru’s participation in consumer protection initiatives within the Asia-Pacific Economic Cooperation Forum, in the tourist-consumer protection initiatives of the Hague Conference on Private International Law and in UNCTAD’s Intergovernmental Group of Experts on Consumer Protection Law and Policy should help the country to make contacts and obtain commitments at the regional and international levels. Lastly, it would be a good idea for INDECOPI to forge closer ties with the private sector in order to increase participation in online reconciliation, especially by suppliers such as the sharing economy platforms that operate in Peru without a physical presence.

The above dispute settlement mechanisms operate in tandem with the mechanisms that businesses may use to resolve consumer complaints directly, of their own accord, and to provide consumers with advice, as recommended in the United Nations guidelines for consumer protection, with a view to minimizing and even preventing disputes. These mechanisms are detailed below in the section on private sector activities.

Dispute settlement and administrative procedures are complemented by another of INDECOPI’s competences, namely its power to bring collective actions to defend consumer interests.

(d) Collective actions

Collective actions allow for individual consumer claims to be aggregated when the facts of the claim, the breach of law and the offending company are one and the same. By grouping claims in this way, proceedings can be rendered more effective and efficient, with procedural costs reduced and a fair correlation between detriment and penalty guaranteed.

Collective actions may be used to defend collective or common consumer interests. Cases involving the former might concern a large group of private interests that can be individualized ex ante, such as, for example, the damage caused by a pyramid sales scheme, whereas cases involving common interests

⁷⁷ INDECOPI, “Concilia Fácil” platform. See www.indecopi.gob.pe/documents/1902049/0/ConciliaFacil.pdf/fb16bd86-562e-d1ee-cc4f-cf5f8012a17d.

⁷⁸ INDECOPI, “Reclama Virtual” platform. See <https://enlinea.indecopi.gob.pe/guiaconsumomype/>.

would concern communal interests that can only be individualized after the event, such as, for example, damage caused to the environment. As described in chapter III above, both INDECOPI and the consumer associations are legally empowered to bring collective actions through administrative channels, but only INDECOPI has the authority to defend collective interests through judicial channels.

Owing to the efficacy of actions pursued through the administrative channel, there are no precedents for collective action to defend consumer rights pursued through the judicial channel. This has created a situation in which the possibility of seeking judicial protection for consumer rights is not fully explored. Furthermore, collective actions are complex and very costly to manage, although the fact that their results can have a significant impact on a large number of consumers provides justification for their use. What's more, the general preventive effect that judicial decisions have on the market tends to be greater than that of administrative decisions. Thus, in order to maximize the impact of collective actions to defend consumer interests, INDECOPI should consider the possibility of pursuing such cases through the judicial channel. It would also be a good idea to encourage other parties to bring collective actions in the courts, especially consumer associations and consumers grouped together on an ad hoc basis for this type of action. To this end, it would be helpful if, in addition to relaxing the requirements for legal standing, INDECOPI could provide technical assistance and/or training in collective actions for the consumer associations.

5. International cooperation

Peru is at the regional and international vanguard in the area of consumer protection and boasts a number of achievements in the area of international cooperation. All public entities with consumer protection responsibilities in Peru are committed to international consultation and exchange, including at the level of law enforcement. This commitment is in line with the recommendations contained in the United Nations guidelines for consumer protection, which urge Member States to strengthen their ties in order to combat fraudulent and deceptive practices, prevent the international distribution of products that have been banned, withdrawn or severely restricted, make use of existing international networks and enter into appropriate bilateral and multilateral arrangements.

INDECOPI has concluded bilateral cooperation agreements with 10 countries, namely, Argentina, the Plurinational State of Bolivia, Canada, Chile, Costa Rica, El Salvador, Mexico, Panama, Paraguay and the United States of America. These agreements take the form of memoranda of understanding of a declarative nature that are not legally binding. The bilateral cooperation primarily takes the form of information exchange and mutual assistance, although, in the case of Chile, it also extends to alternative dispute settlement and cross-border claims management, intended specifically to assist nationals of either of the two countries who cross the border on a regular basis. The parties undertake either to process claims received or to refer them to their counterparts in the other country within 24 hours so that they can be forwarded to the competent institutions. The agreement was initially implemented in the regions of Tacna and Moquegua in Peru and the regions of Arica and Parinacota and Tarapacá in Chile. In 2013, it was extended to the regions of Arequipa, Cusco, Puno and Lima in Peru and Santiago in Chile. Extended cooperation of this kind can serve as an incentive to pursue any problems that cross-border consumers, whether tourists or electronic commerce customers, might encounter.

INDECOPI is also committed to regional consumer protection initiatives. Peru has chaired the OAS Consumer Safety and Health Network, which provides a medium for sharing information and experience, disseminating information on the subject and educating stakeholders about the safety of consumer products and their impact on health, as well as a channel for issuing consumer product alerts.

Peru participates in the Andean Platform for the Protection of Consumer Rights and has chaired the Pacific Alliance and its Consumer Protection Subgroup. It is a member of several working groups of the Ibero-American Forum of Government Consumer Protection Agencies, and leads and chairs some of them, including, notably, the working group on the implementation of the United Nations guidelines for consumer protection.

One particularly successful regional initiative was the COMPAL Programme for strengthening institutions and capacities in the area of competition and consumer protection policies, which UNCTAD ran in

17 Latin American countries.⁷⁹ From 2015 to 2018, INDECOPI hosted the COMPAL School, offering specialized training on consumer protection, with a particular focus on electronic commerce, financial services, consumer education, voluntary compliance for businesses and alternative dispute settlement for officials from all the Programme's member countries. The participating agencies reported a 60 per cent increase in their institutional capacities after receiving training on the topics addressed. The experience was particularly highly valued by the agency heads of the countries participating in the Programme, since the training helped both to build the technical capacities of individual officers responsible for the areas covered by each course in one of the participating countries and to foster consensus and informal links between agencies. In addition, in 2015, INDECOPI hosted the Fifth International Consumer Protection Forum,⁸⁰ which was focused on promoting global protection and brought together more than 150 representatives of government authorities, consumer associations and businesses from Latin American countries, the United States and Europe to discuss public policy issues.

In terms of informal multilateral cooperation, INDECOPI participates in the International Consumer Protection and Enforcement Network, especially in the following areas: (a) unfair commercial practices on digital platforms in the tourism sector; (b) consumer education, and the committee that organizes the Consumer Education Awards; and (c) marketing practices aimed at children in the digital world. At the intergovernmental and multilateral level, Peru participates in the OECD Committee on Consumer Policy and leads the UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy. Notably, in 2018, it made a voluntary contribution to the work of the Intergovernmental Group of Experts in the form of a virtual catalogue of international best practices in consumer protection and competition.⁸¹

INDECOPI should continue investing resources in deepening bilateral and international cooperation, especially in cooperative initiatives that might serve its

most pressing concerns, namely, the digital economy and the resolution of cross-border disputes. INDECOPI is the principal consumer protection authority in Peru, but it is not the only one. Other public institutions with competencies and experience in this area also have an important role in ensuring consumer protection across all sectors.

B. OTHER PUBLIC INSTITUTIONS

The institutional framework for consumer protection in Peru is well established, and a number of public institutions have a role. The Consumer Code establishes the guiding principles and the manner in which competencies are distributed, and is supplemented by specialized and sectoral regulations. Coordination between the different bodies is the responsibility of the National Council for Consumer Protection. INDECOPI publishes an annual report on the state of consumer protection in Peru⁸² that contains information on the main activities undertaken by the other public institutions active in the field of consumer protection.

The distribution of competencies between INDECOPI and the rest of the authorities is guided by the principles of specialization and competency. Ministries, regulators, ombudsmen's offices, superintendent's offices, and regional and local governments are all empowered to adopt regulations that might impact on consumer protection in their area of competency, but INDECOPI retains residuary powers over all aspects of consumer protection. In other words, INDECOPI assumes all the responsibilities that are accorded to it under the Consumer Code and special laws, and also all those that have not been assumed by other public entities that might potentially be empowered to carry out those functions.

This complex institutional framework, which is common to most countries, requires continuous coordination in order to ensure uniform availability of consumer protection in all sectors and all parts of the country. Peru's coordination mechanism is the National Council for Consumer Protection, whose structure and powers were described earlier in section III of this report. The composition of the Council, which has met 92 times in the last seven years,⁸³ is shown in figure V.10 below. In the course of its meetings in 2018,

⁷⁹ UNCTAD, COMPAL Programme. See <https://unctadcompal.org/>.

⁸⁰ UNCTAD, COMPAL Programme, Fifth International Consumer Protection Forum: towards global protection, 2015. See <https://unctadcompal.org/events/v-foro-internacional-de-proteccion-al-consumidor-hacia-una-proteccion-global/>.

⁸¹ TD/B/C.I/CPLP/15.

⁸² INDECOPI, Estado de la protección de los consumidores en el Perú (see footnote 47 above).

⁸³ *Ibid.*, page 58.

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the Council addressed consumer issues including tax services provided via online platforms, perceptions of cultural diversity and ethnic and racial discrimination, security in the financial system and cement labelling, to name but a few. The Council also discussed and issued opinions on various draft regulations, including the regulations governing the market conduct of financial service providers issued by the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators and the Ministry of Education's draft regulations for private schools.

The public entities that make up the National Council for Consumer Protection are involved in the formulation and adoption of the National Consumer Protection Policy and the National Consumer Protection Plan, and are thus committed to implementing them. The vast majority have provided training and guidance for

both consumers and suppliers (see table V.2). Entities with responsibilities in the field of health and product safety – namely, INDECOPI, the Ministry of Health, the Directorate General of Environmental Health and Food Safety, the Directorate General for Medicines, Supplies and Drugs, the National Health Authority, the Ministry of Production, and the National Tax Administration and Customs Authority – are also required to implement the hazardous products and services alerts system. INDECOPI, along with the regional governments, is also responsible for managing the consumer arbitration system throughout the country. Lastly, all entities with a seat on the Council must promote compliance with the regulations and endeavour to build their capacities and optimize their policies with a view to strengthening the system itself.

**Figure V.10
Composition of the National Council for Consumer Protection**



Source: INDECOPI.

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Table V.2
Training and advisory activities organized for consumers and suppliers by entities involved in implementing the National Plan 2017–2020. Achievement of goals in 2018 (number of beneficiaries)

| Body | Training for consumers | Training for suppliers | Advice sessions |
|--------------|------------------------|------------------------|------------------|
| INDECOPI | 3 183 | 820 | 469 067 |
| Ositran | 3 538 | 190 | 14 685 |
| Sunass | 9 509 | 350 | 92 041 |
| Osiptel | 168 844 | 78 | 664 845 |
| Osinergmin | 8 189 | 7 426 | 354 754 |
| SBS | 29 673 | 110 | 191 059 |
| Susalud | 3 879 | 2 302 | 14 120 |
| Sutran | | – | 344 884 |
| Produce | | 384 | |
| Total | 226 815 | 11 660 | 2 145 455 |

Source: INDECOPI.

An analysis of the work of all public entities involved in consumer protection initiatives is beyond the scope of this report. Accordingly, the report will cover only those considered to be of particular importance, based on the interviews that served as point of departure for drafting the report and supporting documents in the public domain.

One of the priorities of the National Council for Consumer Protection is to promote the participation and build the capacities of local and regional governments in the area of consumer protection. Only 40 per cent of the regional and local governments that shared information about their activities for inclusion in the 2018 annual report on the state of consumer protection in Peru had been involved in activities linked to consumer protection. Most regional governments were unable to share management documentation on the subject, the exceptions being the governments of Amazonas, Ancash, Arequipa, La Libertad, Piura and Ucayali. Although regional governments can engage in oversight activities related to consumer protection, in 2018 only the regional government of Piura had done so in all areas of the education, health, transport and tourism sectors. Just 33.3 per cent of regional governments and 45.9 per cent of local governments had carried out training and advisory activities for consumers and suppliers, while 50 per cent of regional governments and 27.5 per cent of local governments that submitted information had undertaken actions aimed at vulnerable or disadvantaged consumers. For

consumer protection to be extended across the entire country in as homogeneous a manner as possible, these figures must be improved.

Pursuant to Organic Act No. 27867 on Regional Governments and Organic Act No. 27972 on Municipalities, regional and local governments have wide-ranging duties in the area of consumer protection, being responsible for ensuring that persons under their jurisdiction can fully exercise their rights and enjoy equal opportunities, and for promoting social development, capacity-building and equity. For this reason it is important for both regional and local governments to have trained staff who can act as focal points for consumer protection in their areas of responsibility. The establishment of consumer protection focal points in regional and local governments would provide an impetus that served to improve their performance in education and training, dispute resolution, and especially consumer arbitration, and product safety. The focal points could also work to coordinate their institution's activities with those of others active in the same areas, such as the regional offices of INDECOPI and other public institutions.

C. SUMMARY

The institutional framework for consumer protection in Peru is satisfactory. The institutions responsible

for consumer protection have, for the most part, shown the leadership necessary to safeguard the rights of consumers in the marketplace. In particular, INDECOPI, as the lead consumer protection agency with residuary jurisdiction in all sectors, has been successful in its activities in all the main areas covered by the United Nations guidelines for consumer protection. These activities include participating in the legislative process and organizing educational and information-sharing initiatives for consumers, including vulnerable and disadvantaged consumers and users of electronic commerce platforms. INDECOPI, along with other stakeholder institutions, has also turned its attention to consumer health and safety, notably developing the hazardous products and services alerts system. INDECOPI is also committed to enforcement – the impact of its activities in this area being estimated at \$2.5 million in prevented consumer detriment and unlawful supplier gains in 2019 – and heads up a robust system of administrative penalty proceedings that is sometimes confused with the dispute resolution system. INDECOPI has not yet explored the possibility of bringing collective actions before the courts, although this course of action has the potential to yield significant benefits in terms of both consumer redress and general prevention. It has, however, developed a wide range of alternative dispute resolution mechanisms, including consumer arbitration, conciliation and mediation. It is important that INDECOPI, along with all other entities with responsibilities in the area, ensures that businesses

that do not have their headquarters in Peru, and especially sharing economy platforms, comply with the laws of Peru and participate in dispute resolution. Lastly, INDECOPI is a clear leader on the international stage, participating in almost all forums and initiatives that address issues related to consumer protection.

The other public institutions that form part of the National Integrated Consumer Protection System have also proved effective in their work to protect consumers in their respective areas of responsibility. The work of these institutions is coordinated by the National Council for Consumer Protection, which helps to ensure consistency in the application of public policies and has proved a fruitful and beneficial initiative for its members. One way to strengthen the entities that make up the Council would be to reinforce the capacities of regional and local governments in consumer protection and, in particular, to establish a focal point in each government centre.

Public institutions that have an interest in consumer protection, be it INDECOPI, a sector regulator, a regional or local government or some other entity, need the support of other stakeholders to perform their duties effectively. In other words, without consumer associations and businesses, a successful consumer protection policy would not be possible. Fortunately, Peru has dynamic associative and private sectors that contribute to this success and shape the reality of consumers in the country. These sectors are described briefly below.

VI. PARTICIPATION OF THE ASSOCIATIVE AND PRIVATE SECTORS

Consumer protection requires the participation of all stakeholders if adequate protection for the country's population as consumers is to be achieved and maintained, in line with the objectives of the United Nations guidelines for consumer protection. It also requires the support of the public authorities, especially the institutions responsible for the preparation of public policy and law enforcement, and of market agents, i.e. businesses and consumer groups and associations. This chapter addresses the situation in Peru with regard to consumer associations, suppliers and their activities, and identifies both successful practices and areas for improvement.

A. CONSUMER ASSOCIATIONS

Consumer associations in Peru protect, defend, inform and represent consumers. They operate independently, in accordance with the United Nations guidelines for consumer protection.⁸⁴ Their importance is recognized in the pro-associative principle established in the Consumer Code, according to which the State has a responsibility to facilitate the activities of consumer associations within a framework for responsible action such as the National Council for Consumer Protection.

To ensure the independence and transparency of consumer associations, the Consumer Code prohibits them from:

- (a) Admitting for-profit legal entities as members;
- (b) Receiving funding from suppliers that sell products or services;
- (c) Engaging in activities that have no relation to or are incompatible with their purpose;
- (d) Allocating public funds collected through the imposition of fines for a purpose other than that for which the funds are intended;

- (e) Acting in a clearly reckless manner by filing official reports in bad faith through administrative or judicial channels;
- (f) Failing to comply with the provisions of the Consumer Code or the decisions of the Governing Board of INDECOPI.

Consumer associations must be recognized by INDECOPI if they are to be able to carry out the full range of functions attributed to them under Peruvian law. INDECOPI carries out formal checks on the registration of consumer associations included in public registries and is responsible for verifying that their stated purpose complies with the requirements of the Consumer Code.

There are currently 75 consumer associations in Peru recognized by INDECOPI.⁸⁵ Every two years, three of these associations are elected to serve as members of the National Council for Consumer Protection by representatives of the associations on the official register of consumer associations. The Instituto del Derecho Ordenador del Mercado (Institute for Market Regulation Law), Instituto de Defensa Legal del Ambiente y el Desarrollo Sostenible (Institute for the Legal Defence of the Environment and Sustainable Development) and Nouvelle Défense (New Defence) were elected as members of the Council for 2020.⁸⁶ The Asociación Peruana de Consumidores y Usuarios (Peruvian Association of Consumers and Users)⁸⁷ is the only Peruvian member of the international federation Consumers International.⁸⁸

⁸⁴ United Nations guidelines for consumer protection, chap. I (Objectives), para. 1 (e).

⁸⁵ INDECOPI, official national register of consumer associations. See www.consumidor.gob.pe/documents/127561/4288873/RO_AACC_NOVIEMBRE_2019_VF.pdf/7861148e-83dd-2106-889a-837429e3e9a0.

⁸⁶ According to the result of the elections of 9 December 2019, confirmed by the Office of the President of the Council of Ministers.

⁸⁷ See <https://aspec.org.pe/>.

⁸⁸ Consumers International, Members, Asociación Peruana de Consumidores y Usuarios. See www.consumersinternational.org/members/members/peruvian-association-of-consumers-and-users-aspec/.

The principal task of consumer associations is to ensure that consumers' voices are heard by public policy makers. This they do either through the National Council for Consumer Protection or by publishing opinion pieces in the press. They also run educational and information campaigns for consumers on matters of interest and topical issues, and have a key role in the complaints system in Peru, representing the individual or collective interests of consumers before State bodies.

Strengthening consumer associations is a strategic objective for Peru, given the fundamental role they play in consumer welfare. To this end, it is important to ensure that they have viable business models, professionalized members and fluid channels of communication with public institutions.

1. Business model viability

Consumer associations in Peru are funded mainly through the collection of a percentage of the amounts that are raised through fines. The Consumer Code allows associations to represent the interests of consumers in administrative proceedings brought before INDECOPI and, subject to INDECOPI's authorization, to represent the interests of consumers in collective actions brought before the courts. The Consumer Code establishes a system of funding whereby the associations receive a percentage of the funds raised through fines and sanctions to cover the legal expenses incurred by their lawyers. As mentioned in chapter III, the funds awarded to an association may not exceed 50 per cent of the fine imposed and only 5 per cent of this amount may be used to cover ordinary operating expenses such as the payment of staff salaries. The financial accounts of consumer associations are audited by the Office of the Comptroller General.

This legislative framework enables consumer associations to assist and support consumers throughout the complaints process while at the same time raising the revenues necessary to fund their activities. This has undoubtedly helped to raise awareness of consumer rights and has also strengthened the national associative network.

Since consumer associations are not permitted to receive direct funding from suppliers, their sources of financing are limited to potential membership fees and public funding. As in most developing countries,

consumer associations in Peru have too few members to guarantee financial viability. Retaining a percentage of the funds raised through fines makes it possible to receive public funding without gouging the public purse. However, this system has left consumer associations with a litigation-based business model that is, by nature, precarious.

This system establishes a clear incentive for associations to opt for administrative penalty proceedings over other means of dispute settlement, since the imposition of sanctions is necessary for their funding model. Given that, in practice, the funds awarded to an association never exceed 20 per cent of the total penalty imposed, associations have to ensure that the businesses involved in proceedings are ordered to pay court fees and related legal expenses in order to recoup the legal fees of their lawyers. Evidently, associations advising consumers have no incentive to reach an amicable settlement with businesses through mediation or conciliation. For this same reason, they also have no incentive to advise consumers to opt for arbitration.

However, since only 5 per cent of the amount awarded can be used to cover operating expenses, the associations have been unable to diversify into other activities that could unlock new forms of funding. Only the Asociación Peruana de Consumidores y Usuarios publishes periodicals that might stoke consumers' interest in paying membership fees; no other association has the necessary resources to undertake similar initiatives.

The public funding of consumer associations is a complex and constantly evolving issue, especially in developing countries where the associative movement is less well established. There are several models that could provide inspiration, including those adopted by Chile, Spain and the European Union.

Since 2005, Chile has had a system of competitive grant funding for consumer associations.⁸⁹ The grants awarded must be used for projects designed to raise awareness of the Consumer Protection Act; informing, guiding and educating consumers; proposing measures and supporting research; or participating in regulatory processes. They cannot be used to cover the cost of representing individual or collective consumer interests before the administrative

⁸⁹ National Consumer Service of Chile, competitive grant funds. See www.sernac.cl/portal/620/w3-propertyname-647.html.

or judicial authorities or to cover running costs. Any association that does not carry out the project for which it was awarded funding or whose management of the project is seriously flawed is excluded from subsequent competitive application processes.

In addition to project-based competitive grant funds, Spain offers public subsidies to support the everyday operations of consumer associations whose structure is “sufficiently well-established to allow them to effectively perform their representative functions [...] and develop active policies”. To qualify for subsidies, associations must be sufficiently representative, meaning that they must have at least 10,000 individual members, have local offices in at least five regions and be represented in consultative bodies and institutions.⁹⁰

The European Union has a mixed public-private funding model for consumer associations, whereby competitive grant funds are established on a project-by-project basis.⁹¹ European Union funds may not be used to cover more than 50 per cent of a project's total cost, which means that other sources of funding are required. The project's purpose must be in line with strategic guidelines issued by the European Commission. Part of the funds awarded may be used to cover the running costs of the association and part can be used to cover operational costs.

With a view to strengthening consumer associations and reducing the prevalence of litigation in consumer relations, Peru should diversify the sources of funding available to associations, both by encouraging them to adjust their business models and by providing direct public funding.

Currently, only the Asociación Peruana de Consumidores y Usuarios has a business model based on membership fees and the sale of services such as product checks and periodicals on consumer issues. INDECOPI could encourage other consumer associations to adopt this autonomous business model and provide technical assistance or training to this end. At present, however, this option is not entirely feasible for most associations; other funding avenues should therefore be considered, especially direct public funding based on international best practices. In addition to a viable business model, associations should have professional, trained staff.

2. Professionalization of consumer associations

As in other countries, consumer associations in Peru rely heavily on the activism of persons committed to improving the well-being of their fellow citizens. Many people are willing to invest time and effort for free, volunteering being the basis of the consumer movement. This is one of the strengths of the consumer association and should be promoted. However, volunteering is intrinsically unstable, since it depends on personal availability and is not suited to medium- and long-term activities. The professionalization of the membership of consumer associations is therefore to be encouraged.

Professionalization is primarily achieved by ensuring stable sources of funding to cover running costs, such as staff salaries and office rentals, a topic covered in the above paragraphs on business models. Another means of professionalization is to provide relevant training, not only on substantive topics such as the Consumer Code and administrative proceedings, but also on essential skills such as management and administration, communication, fundraising and teaching methods.

The INDECOPI National Training Centre has run courses for consumer associations in the past, and INDECOPI could consider offering further such training, including management courses to help associations to maximize the impact of their work and consolidate their activities. The professionalization of consumer associations could set in motion a virtuous circle that unlocks independent funding channels, such as membership fees or the sale of services. This should also help to increase dialogue with INDECOPI.

⁹⁰ Order No. SSI/949/2013 of 27 May establishing the regulatory basis for the granting of subsidies to consumer and user associations at the State level, aimed at promoting consumer associations and activities intended to inform and defend consumers and to protect consumer rights. Available at www.boe.es/diario_boe/txt.php?id=BOE-A-2013-5714.

⁹¹ Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014–2020 and repealing Decision No 1926/2006/EC. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0254&from=EN>.

3. Dialogue with the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI)

Consumer associations in Peru are represented on the National Council for Consumer Protection in order to ensure that consumers' views are taken into account in the formulation of public policy on consumer protection. While there are currently 75 recognized consumer associations nationwide, owing to legal and practical requirements only 3 associations have a seat on the Council. These three associations are elected every two years in a vote open to all legally recognized associations that is organized by INDECOPI.

This being the case, the network of consumer associations currently has no means of internal consultation through which to take decisions or make positions known to the Council. As a result, there is a lack of communication between consumer associations as a whole and the public institutions involved in consumer protection, in particular INDECOPI. Other countries, such as Australia and France, have addressed this shortcoming by convening annual discussion forums that bring together their countries' consumer associations and other stakeholders. In many cases, such forums are convened directly by the public authorities and are yielding positive results. They are therefore briefly mentioned here as an example of best practice.

Every year, the Australian Competition and Consumer Commission holds the National Consumer Congress,⁹² which brings together consumer groups, community organizations and government bodies to discuss issues impacting consumers and develop strategies to improve consumer justice and welfare. In France, meanwhile, the role of the National Consumer Council,⁹³ a joint consultative body composed of representatives of consumer associations and employers' associations, is to discuss issues of interest to consumers, to comment on draft legislation and public policy, and to facilitate agreements between consumer associations and employers' associations.

⁹² Australian Competition and Consumer Commission, National Consumer Congress. See www.accc.gov.au/about-us/conferences-events/national-consumer-congress.

⁹³ National Consumer Council, Presentation. See www.economie.gouv.fr/cnc/presentation-conseil-national-consommation-cnc.

INDECOPI might consider reconvening the National Congress on Consumer Protection as a forum for public policy discussion whose conclusions would not be binding on State authorities. The Congress would complement the consultative role of the National Council for Consumer Protection and would provide consumer protection associations and employers' associations with a channel through which to express their concerns and state their positions on issues of interest. It would also provide a good opportunity to take the pulse of the state of consumer protection and consumer associations in Peru, and ideally would attract media interest and help to enhance the culture of consumer protection in the country. The Congress could also inform INDECOPI's strategic decision-making.

It should be mentioned in this connection that sectoral regulators in the fields of energy and mining, telecommunications and health have their own consultative bodies, known as "user councils", composed of representatives of civil society, including consumer associations. In addition, the National Standards Institute has made provision for a consumer representative to have a seat on its board of directors. These are all initiatives that promote dialogue between the associative sector and the public institutions responsible for consumer protection.

B. SUPPLIERS

In modern consumer protection policies, businesses are considered key stakeholders with a role in the achievement of policy objectives. They are no longer considered mere subjects of law with a fundamental obligation towards consumers but rather as having a responsibility towards society. As such, they have an interest in promoting consumer protection policy. Businesses have thus become active players in consumer protection and allies of the State and consumer associations. Accordingly, the United Nations guidelines for consumer protection now for the first time contain recommendations addressed directly to businesses, establishing principles for good business practices.

Peru is at the international vanguard in this area, since its approach to business is not limited to imposing sanctions but extends to promoting good business practices, dispute prevention and settlement, self-regulation and voluntary compliance programmes.

Although the formal employment sector in Peru is very dynamic in all areas, informal employment exceeds 70 per cent of total employment⁹⁴ and represents 18 per cent of gross domestic product,⁹⁵ and it is important to take this into consideration in any analysis of the contribution of businesses to consumer protection.

1. Law enforcement

Businesses in Peru are subject to the rule of law, and the Consumer Code establishes primary and secondary norms by which they must abide. In other words, the Consumer Code and the other consumer protection norms establish both substantive obligations by which businesses must abide and a system of sanctions for non-compliance. The State bodies responsible for ensuring compliance with consumer protection norms, which are currently mainly administrative in nature, have investigative mechanisms and processes for this purpose, which can be initiated ex officio or at the request of a party. In 2018, the largest penalty imposed by INDECOPI on a business for a violation of consumer protection law was \$550,000.

According to the register of violations and sanctions, named “Check on the seller”,⁹⁶ which is published by INDECOPI, the cumulative total of all the penalties imposed in 2019 was \$11,785,796.26. This public register, which is available online, contains information on every penalty imposed by INDECOPI on businesses and suppliers since 2011. It serves both as a general prevention tool and as a means of informing and empowering consumers. It would be a good idea for the register to be widely publicized in the media.

One challenge for consumer protection in Peru is the enforcement of legislation in the digital economy, and especially collaborative enforcement. Platforms without headquarters in Peru are able to operate in the country under international free trade agreements, and this has occasionally led to situations in which such businesses neglect to respond to consumer complaints or fail to send a representative to participate in administrative penalty proceedings. This situation is contrary to the law and must be remedied

as quickly as possible. The Consumer Code and Peruvian legislation in general are fully binding on all providers offering services in the country, and it is the responsibility of the public authorities to ensure that the law is applied in a universal and uniform manner. One option that should be explored is the introduction of legislative amendments that provide guidance on the correct interpretation of international treaties so as to ensure that all suppliers operating in Peru comply with consumer protection regulations. In parallel, INDECOPI could initiate a dialogue with the businesses concerned to encourage them to participate in voluntary dispute settlement mechanisms. INDECOPI could also strengthen cross-border cooperation on law enforcement with peer agencies in other countries, especially those in which the businesses concerned have their headquarters.

2. Good business practices

Peruvian businesses, organized in employers’ associations, are committed to consumer protection. The nine trade associations interviewed for this report all had experience in raising awareness of consumer protection issues among their affiliates. Trade associations carry out regular training on topics of interest, promoted both by businesses and by the public bodies responsible for consumer protection. They also gather together the interests and concerns of their members and share them with public bodies, formally in the National Council for Consumer Protection and informally through discussions and forums.

INDECOPI actively promotes good business practices through its “Primero, los clientes” (Customers first) awards initiative,⁹⁷ which rewards good practices implemented by public and private enterprises for the benefit of consumers at the national level (see figure VI.11). A total of 163 applications were submitted in 2018, an increase of 243.2 per cent over the previous edition. The awards are divided into the following categories: information mechanisms; handling of claims and enforcement of guarantees; responsible consumption; equality and inclusion; and micro- and small businesses. Initiatives that promote good business practices have the potential to set in motion a virtuous circle for the culture of consumer protection,

⁹⁴ National Institute for Statistics and Data Processing, *Producción y Empleo Informal en el Perú: Cuenta Satélite de la Economía Informal 2007–2017* (2018). Available at www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1589/libro.pdf.

⁹⁵ Ibid.

⁹⁶ INDECOPI, “Mira a quién le compras” (see footnote 53 above).

⁹⁷ INDECOPI, “Primero, los clientes” awards. See www.indecopi.gob.pe/web/proteccion-al-consumidor/primero-los-clientes.

Figure VI.11
Logo of the “Primero, los clientes”
(Customers first) awards



and this is something that should be further developed in future.

As noted above, the informal employment rate in Peru is extremely high, at around 70 per cent. It is therefore in the interests of INDECOPI and other bodies involved in consumer protection to work to strengthen the culture of consumer protection and good practices in the shadow economy. This is not an easy task, since the irregular administrative situation of informal businesses hampers collaborative efforts and makes enforcement very difficult. One initiative that deserves a special mention is the Guide on Best Practices in the Wine Industry, which was issued in September 2018 by INDECOPI, the Ministry of Production, and the Association of Winemakers of Peru to encourage the implementation of procedures and processes aimed at guaranteeing high-quality service. Also noteworthy is the development of the Interactive Consumer Guide for Micro- and Small Businesses,⁹⁸ available online, where businesses can learn about consumer norms and how to implement them in their day-to-day operations. While these initiatives are aimed at the formal sector, they could also be used as tools for raising awareness in the informal sector. However, it would be necessary to adapt the content of these awareness-raising tools, which are currently available in print form and online, into formats that are accessible to businesses in the informal sector, for example, by printing pamphlets that could be distributed in markets or organizing on-site training. This would help to strengthen consumer protection throughout the country.

⁹⁸ INDECOPI, Interactive Consumer Guide for Micro- and Small Business (see footnote 55 above).

3. Dispute prevention and settlement

Companies that have made consumer protection an essential part of their business culture are constantly striving to minimize and avoid disputes with consumers, or to settle them as quickly as possible when they cannot be avoided. This is not simply a question of their commitment to the welfare of consumers, but also an economic consideration, since the costs of contentious proceedings are saved when a dispute is avoided. Today, it seems impossible that conflict can be avoided entirely, hence the continued need for consumer complaints systems; however, the Peruvian business sector also has a diverse system for handling claims and avoiding conflict through means of dispute settlement that do not involve external mediation and trade watchdogs (see figure VI.12).

In addition to their customer support services, some businesses have introduced systems for resolving customer complaints before they end up as claims filed with INDECOPI. Trade associations in the banking, insurance and automobile sectors have set up a system of telephone kiosks, named “Aló Banco”, “Aló Seguros” and “Aló Auto”, in the main offices of INDECOPI through which consumers who wish to make a complaint can communicate with a specialized adviser from the business concerned to try to arrive at an amicable settlement within a period of between 7 and 30 days.

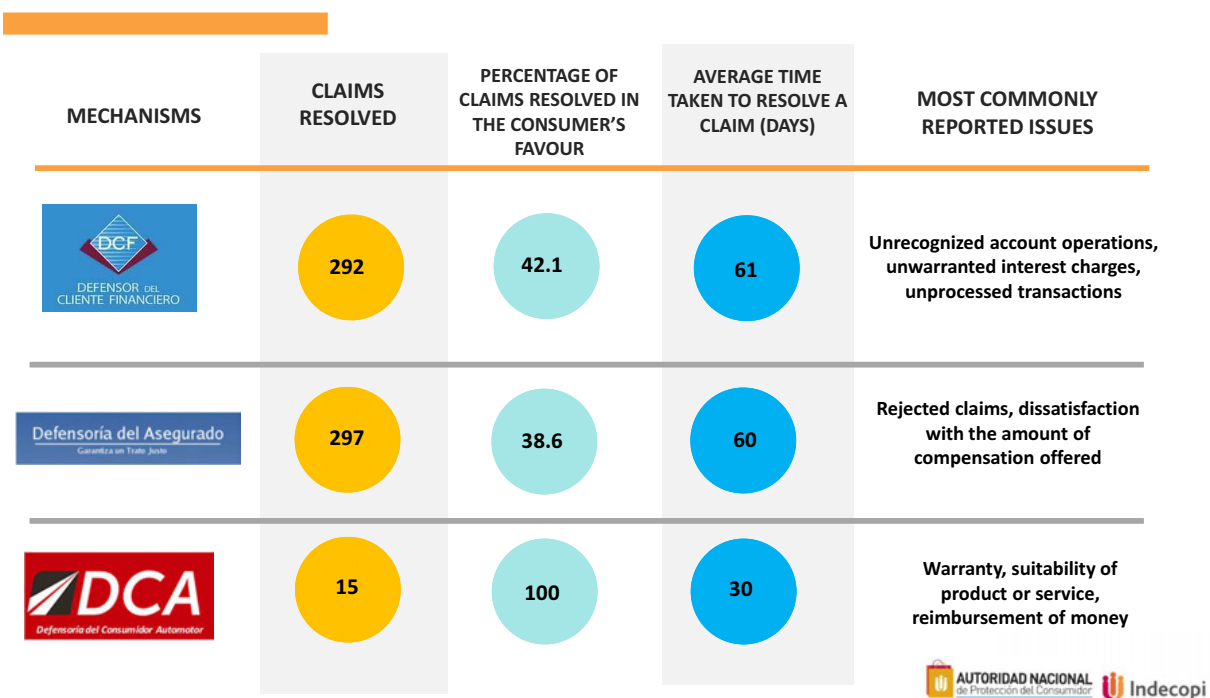
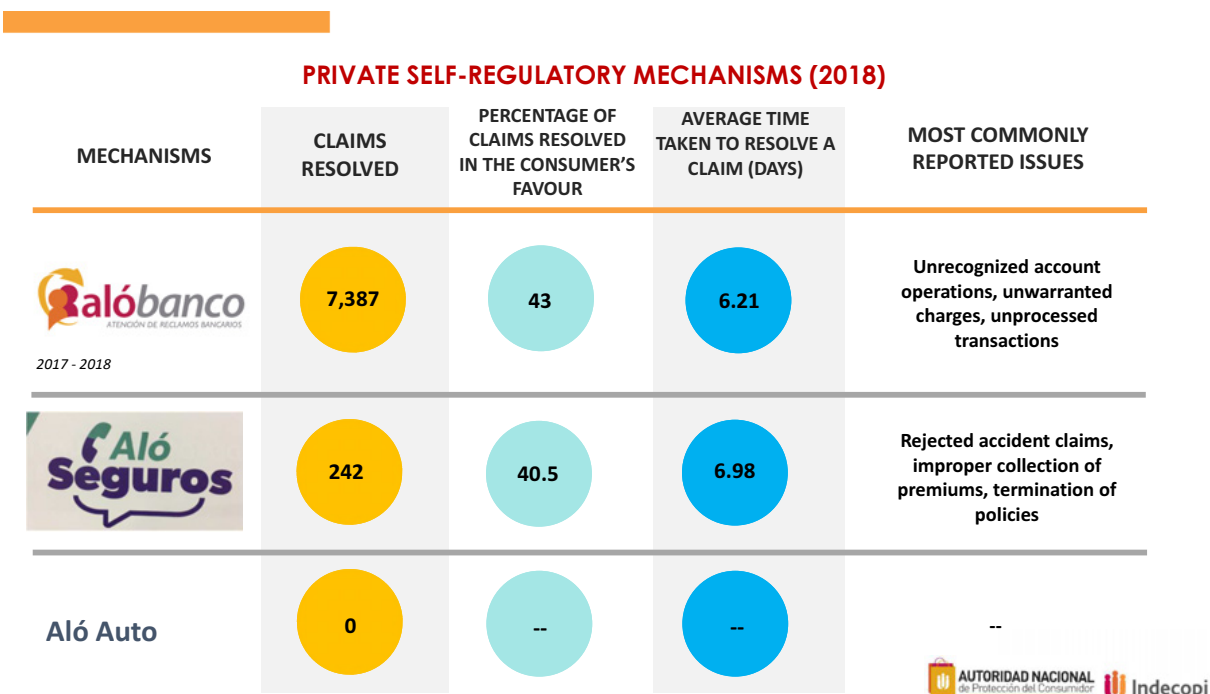
In addition to the above systems, INDECOPI has launched an initiative to encourage businesses to set up and fund sectoral trade watchdogs,⁹⁹ with which consumers can file a claim if they are dissatisfied with the way in which a business has handled their complaint. Claims are submitted free of charge and must be resolved within a period of between 30 and 60 days. The decisions of these watchdogs are binding on companies but not on consumers. To date, watchdogs have been set up for the financial services industry, the insurance industry and the automobile industry.

In 2018, around 8,200 claims were handled through private dispute settlement mechanisms.¹⁰⁰ This figure is set to grow as consumer satisfaction with such mechanisms grows. Peru should continue to help

⁹⁹ Resolution No. 216-2016-INDECOPI/COD of the Office of the President of the Governing Board of INDECOPI.

¹⁰⁰ INDECOPI, Estado de la protección de los consumidores en el Perú (see footnote 47 above), p. 301.

Figure VI.12
Operation of private dispute settlement mechanisms



Source: INDECOPI.

Figure VI.13
Aló Banco telephone kiosk



businesses to adopt private dispute prevention and settlement mechanisms to complement the public sector alternative dispute settlement mechanisms and the public complaint systems discussed above.

4. Self-regulation

Self-regulation is a well-established means of improving consumer protection in the marketplace whereby companies make commitments that go beyond the legal requirements in order to improve the general welfare of consumers and prevent fraudulent or unfair practices that could damage the reputation of their industry. These initiatives usually take the form of codes of good practice, compliance with which is monitored by employers' associations. In Peru, the banking and advertising sectors have extensive experience in self-regulation. For example, the National Council for Self-Regulation in Advertising has a code of ethics¹⁰¹ containing specific provisions on competence, veracity, legality, decency and conformity with social norms in advertising, authenticity, promotions, comparative advertising and

¹⁰¹ National Council for Self-Regulation in Advertising, Codes, Code of Ethics. Available at www.conarperu.org/codigos/que-es-codigo-de-etica.

advertising aimed at minors. This code of ethics is applicable both to companies that are affiliated to one of the trade associations that make up the National Council for Self-Regulation in Advertising and to those that are not.

5. Voluntary compliance programmes

Voluntary compliance programmes are a recent initiative for promoting a culture of consumer protection in Peru whereby businesses assume a series of commitments to avoid or reduce violations of consumer protection law.¹⁰² Article 112 of the Consumer Code provides that the existence of such programmes may be considered a mitigating circumstance in the calculation of penalties. Supreme Decree No. 185-2019-PCM regulates their implementation. Voluntary compliance programmes must be supported by the company's management; provide mechanisms for training employees; include monitoring, auditing and reporting systems; and provide that internal disciplinary sanctions will be applied in the event of non-compliance. For the existence of a voluntary compliance programme to be taken into account in the calculation of penalties, any instances of non-compliance must be isolated and non-recurrent. Factors such as the size of the business, its market share and its sales volumes are also taken into account. This points to a need for rigorous monitoring by INDECOPI to ensure the legitimacy of voluntary compliance programmes and prevent possible fraud.

C. SUMMARY

Consumer associations and businesses are contributing to the development of a culture of consumer protection in Peru, with the support of INDECOPI and the other public bodies involved in consumer protection. The extensive associative and business network in Peru facilitates healthy interaction between market agents and has already had a positive impact on consumers. Strengthening this network must remain a priority for Peru, as the welfare of consumers depends on it. The associative network could be strengthened through stable sources of funding, professionalization of the membership of

¹⁰² Supreme Decree No. 185-2019-PCM approving the regulations that promote and govern the voluntary implementation of regulatory compliance programmes in the areas of consumer protection and commercial advertising.

associations and a more fluid dialogue with public institutions.

Businesses have several instruments at their disposal for contributing to consumer protection, taking as point of departure the stipulation that all suppliers must comply with the obligations established in the Consumer Code and other relevant legislation. The private sector is developing private dispute settlement and conflict resolution mechanisms, self-regulation initiatives and voluntary compliance programmes. One pending issue for private sector participation in consumer protection is informal employment, which exceeds 70 per cent nationally and accounts for 18 per cent of gross domestic product. INDECOPI's

initiatives for micro- and small businesses may also serve to foster a culture of consumer protection in the informal sector.

From the above, it is clear that Peru has an extensive institutional framework for consumer protection. Public institutions, led by INDECOPI, have been able to build bridges with the private and associative sectors, and have reached an optimal point from which to advance in the formulation and implementation of public policy. In addition to many national best practices, this report has identified various areas where improvements could be made for the consideration of policymakers; these areas are summarized in the next, and final, chapter.

VII. CONCLUSIONS AND RECOMMENDATIONS

The purpose of the voluntary peer reviews conducted by UNCTAD is to provide an external assessment of the effectiveness of consumer protection law and policy and to identify the challenges that need to be addressed and the aspects of the legal and institutional frameworks that need to be improved in order to enhance quality, efficiency and consumer protection systems as a whole. Additional aims of the reviews are: to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures, designed in consideration of the economic and developmental particularities of each country; and, where appropriate, to contribute to the implementation of the recommended measures by developing a capacity-building plan in consultation with the country concerned.

The present report, which serves as the basis for the voluntary peer review of Peru, also addresses specific priority areas that were identified by Peru, working in conjunction with UNCTAD. These priorities are strengthening the National Integrated Consumer Protection System; electronic commerce and the sharing economy; consumer product safety; and dispute resolution mechanisms, especially cross-border ones. The United Nations guidelines for consumer protection provide the framework for this analysis, although other international instruments and initiatives commonly recognized as best practices are also referenced.

After conducting an in-depth analysis, UNCTAD concludes that Peru has a robust consumer protection system, through which it has achieved many nationally and internationally acknowledged successes. Its legislative and public policy framework is extensive and balanced, and incorporates almost all of the United Nations guidelines for consumer protection as well as various international best practices. The Consumer Code is well structured, establishes both primary and secondary consumer protection rules, and explains the interplay between its provision and those of other relevant laws. Public policy instruments, and especially the National Consumer Protection

Policy and the National Consumer Protection Plan, are pertinent, ambitious and realistic. They allow for objectives to be set that lead to improved consumer welfare in the marketplace and contain indicators for measuring the success and impact of public policies.

The institutional framework for consumer protection is equally satisfactory. INDECOPI, as the main consumer protection agency serves as leader of the inter-agency coordination system (i.e. the Council) and combines this with effective law enforcement. In addition, INDECOPI has established a highly respected public profile, both among public, associative and private institutions and among consumers in general. Other public institutions with a stake in consumer protection are also actively involved in consumer protection activities. The private and associative sectors are dynamic and have contributed to the establishment of a strong culture of consumer protection in Peru.

The result of this analysis is clearly positive. However, there are some areas in which improvements could be made to strengthen consumer protection, and various recommendations have been put forward to address these areas of weakness. Many of the recommendations are directed towards INDECOPI, as the main consumer protection agency. Others relate to areas that are outside the jurisdiction of INDECOPI, and are therefore addressed to other institutions in the executive, legislative and judicial branches of government and the associative and private sectors. The following paragraphs provide an overall assessment, condensing the detailed analysis set out in the report. In order to make explicit the causal link between analysis, recommendations, target audience and priorities, the chapter ends with a systematized summary in tabular form.

A. LEGISLATIVE FRAMEWORK

The Consumer Code establishes consumer protection as a cross-cutting policy of the State, intended not only to protect individual interests but also to provide a structural framework for the social market economy.

All State institutions are required to comply with the Code and thus to promote consumer protection.

The Consumer Code successfully systematizes the consumer protection rules, explaining its interface with other special legislation and providing lists of regulatory principles and public policy objectives within a single comprehensive instrument. Specific emphasis is placed on protection against discrimination, underscoring the link between consumer protection and the enjoyment of fundamental human rights. The protection afforded by the Code extends to individuals and micro-businesses, taking due account of the country's economic, social and environmental circumstances.

The Consumer Code accords particular attention to consumer health and safety and the provision of regulated public services, establishing the principles of speciality, supplementarity and the distribution of competencies. The Code also establishes the National Integrated Consumer Protection System, designed to harmonize and streamline the work of public institutions involved in consumer protection.

The Code not only contains substantive legislation, defining, for example, the rights and obligations of market agents, but also includes rules on liability and sanctions, special administrative procedures such as the summary procedure, and collective actions to defend consumers rights.

However, as the situation in Peru has evolved since the Code's adoption in 2010, areas in which improvements could be made can now be identified. Firstly, the Code conceives of consumer relations as consisting mainly of disputes between consumers and suppliers, making administrative bodies such as INDECOPI hubs for litigation via administrative penalty procedures. Without denying the obvious effectiveness and necessity of these procedures as a means to pursue compliance failures on the part of businesses, there is room to develop amicable dispute settlement mechanisms and at the same time simplify administrative procedures. Various options may be proposed to this end, including: introducing a requirement for consumers to have submitted a prior complaint directly to the business concerned as a precondition for filing a complaint with INDECOPI (as is the case in the regulated sectors); adding single-person settlement mechanisms and new forms of summary settlement to the avenues of redress

available; and giving INDECOPI discretion to decide whether or not to institute administrative proceedings at the request of a party.

The Consumer Code provides for consumers to seek protection before the courts but this avenue has not yet been explored. To increase the judiciary's involvement in consumer protection, certain legislative amendments might be made. Individual consumers might be permitted to organize themselves into ad hoc groupings and thus to bring collective actions directly before the courts, for example, or the requirement for associations to seek prior authorization from INDECOPI before taking collective actions to court could be removed.

The Consumer Code recognizes a range of special laws that flesh out its provisions. Of particular importance is the Personal Data Protection Act (No. 29733), which was accorded special attention for this study. The regulations contained in this Act are satisfactory in the light of the United Nations guidelines for consumer protection but the manner in which competencies are divided up between the different authorities is proving somewhat inefficient in practice.

B. PUBLIC POLICY FRAMEWORK

The public policy framework for consumer protection in Peru is very broad, and, as a result, a multitude of public entities share responsibility for its implementation. In order to contain the scope of analysis, this study has focused on the National Consumer Protection Policy and the National Consumer Protection Plan, these being specialized consumer protection instruments adopted at the highest level and directed at a very representative set of public institutions.

Both the Policy and the Plan are based on the findings of empirical studies conducted in urban areas, as 75 per cent of the population of Peru lives in cities. It may be the case, however, that this data biased both the Policy and the Plan in favour of the needs of the urban population, skirting over those of the rural population, which is likely to be more disadvantaged and is often more prone to poverty. In addition, neither the Policy nor the Plan accords electronic commerce the importance it is gaining in consumer relations today.

There are two particular areas in which room for improvements to the public policy framework can be identified. These weaknesses correspond to two

legitimate needs addressed in the United Nations guidelines for consumer protection, namely, the need to protect vulnerable and disadvantaged consumers, and the need to ensure a level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce. Thus, both the Policy and the Plan might accord greater attention to vulnerable consumers in disadvantaged situations, and especially poor consumers, while at the same time giving comprehensive consideration to the challenges that electronic commerce poses for consumer protection. Peru's public policy framework is complemented by a dynamic institutional framework that fosters a culture of consumer protection, promotes consumer welfare and guarantees rigorous application of public policy instruments.

C. INSTITUTIONAL FRAMEWORK

The institutional framework for consumer protection in Peru is dynamic and efficient. The institutions in charge of consumer protection have, for the most part, assumed the leadership necessary to safeguard consumer rights in the marketplace. In particular, INDECOPI, as the main consumer protection agency with residuary jurisdiction in most areas, has made successful contributions to all the main areas covered in the United Nations guidelines for consumer protection.

One activity to which INDECOPI has demonstrated particular commitment is its participation in the legislative process. It has succeeded in placing itself at the centre of parliamentary debates on consumer protection and its opinion, while not prescriptive, is respected by the legislature. In addition, INDECOPI regularly proposes legislative amendments for consideration by the Office of the President of the Council of Ministers. This situation is advantageous not only for INDECOPI as an institution, but also for the entire institutional framework for consumer protection, in that there is a highly respected focal point that can articulate and defend the interests of consumers before public policymakers.

INDECOPI is very active in educating and informing consumers, using information technology to maximize the reach of its work in this area. Examples of such initiatives include the “Checa tu Aerolínea”, “Checa tu Taxi” and “Checa tu Uni” service comparison tools, the consumer protection hackathon and the Interactive

Consumer Guide for Micro- and Small Businesses. Additionally, Through its radio station, INDECOPI is able to raise awareness of consumer rights among a massive audience. INDECOPI also undertakes activities targeting vulnerable and disadvantaged consumers, such as the “Todos somos consumidores” campaign. Given that levels of poverty in Peru remain high - in 2018 20 per cent of the population were living below the poverty line, with this figure rising to 44 per cent in rural areas - it is important that persons exposed to poverty and those living in rural areas be considered potentially vulnerable or disadvantaged and therefore deserving of special attention. Accordingly, in line with the United Nations guidelines for consumer protection, INDECOPI should redouble its efforts, firstly, to strengthen consumer protection in the digital economy and, secondly, to address the needs of vulnerable or disadvantaged consumers, especially those living in poverty and in rural areas.

Together with other stakeholder institutions, INDECOPI also works to protect the health and safety of consumers, notably through its hazardous products and services alerts system. The number of product withdrawals has increased since this system was introduced in 2012 but, in order to strengthen the system, there is a need to optimize the use of laboratories for product checks, possibly drawing on the resources of laboratories managed by the customs authority (the National Tax Administration and Customs Authority) for this purpose. There is also a need to improve communication between the competent entities (the Directorate General for Medicines, Medical Supplies and Drugs, the Directorate General for Environmental Health and Food Safety, the National Tax Administration and Customs Authority, the National Agricultural Sanitation Service and the consumer associations). Another possible line of work would be to collect data on consumer accidents, drawing in particular on hospital records. Furthermore, the safety of imported products needs to be guaranteed, either by introducing standards or requiring businesses to share pertinent information. Efforts should also be made to build the capacities of other stakeholders, in particular members of the judiciary and consumer associations.

INDECOPI effectively promotes the protection of consumers' economic interests, notably through law enforcement investigations and penalty proceedings. It is also working to extend access to dispute settlement and redress mechanisms. Its compliance activities

are of particular note, and, in 2019, were estimated to have had an impact equivalent to \$2.5 million in detriment for consumers and unlawful gain for suppliers. The use of instruments such as the OECD consumer policy toolkit and the establishment of specific competencies in electronic commerce might help to reinforce the positive results of investigations.

Administrative penalty proceedings consume a sizeable proportion of INDECOPI's resources and serve both to ensure that consumers have access to justice and to punish misconduct on the part of suppliers. The administrative proceedings system is well established and effective, and follows the United Nations guidelines for consumer protection in that it offers fair, effective, transparent and impartial mechanisms.¹⁰³ However, it can be a significant burden on the treasury. INDECOPI might therefore consider making certain reforms. Some procedures could be handled by single-person settlement mechanisms, for example; or proceedings could be expedited either by allowing oral hearings or introducing a requirement for consumers to have lodged a claim directly with the supplier prior to initiating proceedings with INDECOPI. Giving INDECOPI discretion to decide whether or not to institute administrative penalty proceedings might help to ensure that resources were allocated to the cases likely to have the greatest impact. In addition, to improve legal certainty, INDECOPI could call for all rulings issued by the Chamber to be legally binding.

INDECOPI has developed a wide range of alternative dispute settlement methods, including consumer arbitration, conciliation and mediation. These mechanisms reflect trends internationally, which attest to a desire to reduce the use of litigation in consumer relations in favour of amicable settlements between consumers and suppliers. Electronic platforms, such as those used by the "Easy conciliation" tool, are of particular interest to this end because the solutions they offer have greater potential for adaptation and growth. Special attention should be paid to the resolution of cross-border disputes, which require international agreements and cooperation between consumer protection agencies in other countries. It is also important for INDECOPI to ensure that businesses not based in Peru, especially those forming part of the sharing economy, comply fully with Peruvian laws, and that they also participate in the resolution of disputes.

One avenue yet to be explored is the possibility of bringing collective actions before the courts. Although the existing legal framework is effective, a number of possible improvements have already been identified above. As regards the institutional framework, in order to maximize the impact of collective actions, which is greatest when the decision on loss or detriment is reserved for the judiciary, INDECOPI should invest resources in promoting judicial protection for consumers. It should also make it easier for consumer associations to bring collective actions, granting them the authorization currently lacking.

Lastly, INDECOPI has a very active international presence, and participates in almost all forums and initiatives that address issues related to consumer protection. It has concluded 15 bilateral cooperation agreements and is committed to regional consumer protection initiatives within the framework of the OAS, the Andean Community, the Ibero-American Forum of Government Consumer Protection Agencies, the International Consumer Protection and Enforcement Network, OECD and UNCTAD. In order to ensure optimal protection in today's globalized commerce, INDECOPI should continue strengthening cross-border cooperation, particularly in addressing the needs of digital consumers and tourists or cross-border consumers. For example, it might include clauses on cross-border dispute resolution in the agreements it concludes with other countries or reinforce the country's contributions to forums in which cross-border dispute resolution and product safety initiatives are discussed. INDECOPI might also reinforce its regional leadership by continuing projects such as the INDECOPI-COMPAL School, run in conjunction with UNCTAD.

All other public institutions that make up the National Integrated Consumer Protection System have successfully rolled out activities that are effective in ensuring protection for consumers in their areas of competence. Their work is coordinated through the National Council for Consumer Protection, which lends consistency to public policy and is an initiative that has proven fruitful and beneficial for its members. One way to strengthen the institutions represented on the Council would be to reinforce the capacities of regional and local governments in consumer protection and, in particular, to establish a focal point in each government centre.

¹⁰³ United Nations guidelines for consumer protection, chap. V (Guidelines), section F, para. 37.

D. PARTICIPATION OF THE ASSOCIATIVE AND PRIVATE SECTORS

Consumer associations and businesses contribute to the development of a culture of consumer protection in Peru. Strengthening these sectors should remain a priority for the country, as the welfare of consumers depends on it. The associative network is extensive, with more than 75 consumer associations, but is at the same time fragile, since sources of funding are limited. Peru should assess the adequacy of the current system of financing consumer associations, whose main source of income at present is the collection of a percentage of the amounts that are raised through fines and sanctions to cover legal fees and expenses. A common choice in other countries is public funding through competitive grants, which ideally should cover the running costs of the associations. In addition to improving its funding channels, Peru should foster the professionalization of these associations by providing training in management and administration, communication, fundraising and teaching techniques. Lastly, INDECOPI should invest in improving channels of regular communication with all consumer associations, rather than focussing on the three associations represented on the National Council for Consumer Protection. To this end, it might consider reconvening the National Congress on Consumer Protection as a forum for public policy discussion that brings together all consumer associations, the private sector and other stakeholder institutions.

Businesses can contribute to consumer protection in various ways. A basic principle is that all suppliers must comply with the obligations set out in the Consumer Code and other relevant legislation, although these are not currently applicable to digital and sharing economy platforms operating in

Peru without a physical presence in the country. To address this situation, decisive action, such as legal amendments that clarify the manner in which existing international treaties should be interpreted or a strengthening of international cooperation, is needed. Formal businesses in Peru have opted to improve their business practices, as recommended in paragraph 11 of the United Nations guidelines for consumer protection, including by participating more actively in the primary dispute settlement mechanisms, through which 8,200 complaints were resolved in 2018. INDECOPI encourages the adoption of good practices by offering positive incentives (such as the “Primeros, los clientes” awards), promotes dispute prevention and settlement, supports self-regulatory initiatives and rewards voluntary compliance programs. It is particularly important that voluntary compliance programmes are effective, and that INDECOPI guarantees their legitimacy by ensuring that sanctions are applied in cases of non-compliance.

One pending issue for private sector participation in consumer protection is the informal sector, which accounts for more than 70 per cent of employment nationally and 18 per cent of gross domestic product. Naturally, INDECOPI's initiatives are mainly aimed at the formal sector. Some of these initiatives, however, such as the Interactive Consumer Guide for Micro- and Small Businesses, may also serve to foster a culture of consumer protection in the informal sector. There is still room to explore other initiatives specifically targeted at this sector with a view to improving the welfare of consumers, especially those who are disadvantaged, such as persons living in poverty and/or in rural areas.

Below, to close this chapter, the recommendations resulting from this report are summarized in a table setting out general and specific findings, conclusions, the target audience and the level of priority accorded to each recommendations (I: high, II: medium, III: low).

**Table VII.3
Recommendations**

| Main recommendations | Specific recommendations | Target audience | Priority: I (high), II (medium), III (low) |
|--|--|---|--|
| Legislative framework | | | |
| <p>Provide consumers with access to remedies that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses by harmonizing and improving administrative procedures and promoting collective action before the courts.</p> <p>Review existing legislation to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.</p> | <p>Harmonize administrative claims procedures in the field of consumer protection with a view to establishing a unified procedure for all public entities with competencies in the area, including a single portal for submitting complaints related to any sector of consumption, that is funded from the general budget.</p> | Office of the President of the Council of Ministers | I |
| | <p>Establish single-person settlement mechanisms and/or new forms of summary settlement.</p> | Office of the President of the Council of Ministers | II |
| | <p>Introduce a requirement for prior contact between consumers and businesses before a complaint can be filed with INDECOPI, as is the case in regulated sectors.</p> | Office of the President of the Council of Ministers | III |
| | <p>Give INDECOPI discretion to decide whether or not to institute administrative proceedings at the request of a party.</p> | Office of the President of the Council of Ministers | III |
| | <p>Allow consumer associations and ad hoc consumer groups to bring collective actions directly before the courts, without prior authorization from INDECOPI.</p> | Office of the President of the Council of Ministers | II |
| | <p>Review legislation to adapt it, where appropriate, to the needs of electronic commerce in the light of the United Nations guidelines for consumer protection and OECD Recommendations.</p> | Office of the President of the Council of Ministers | I |
| | <p>Ensure that businesses operating in the Peruvian market comply with consumer protection obligations, especially those that do not have operational representation in the country.</p> | Office of the President of the Council of Ministers | I |
| | <p>Allow electronic notification for suppliers.</p> | Office of the President of the Council of Ministers | II |

Voluntary peer review
on consumer protection law and policy: PERU

| Main Recommendations | Specific recommendations | Target audience | Priority: I (high), II (medium), III (low) |
|---|---|--|--|
| Public policy framework | | | |
| Extend the reach of the National Consumer Protection Policy and the National Consumer Protection Plan to include vulnerable and disadvantaged consumers, especially poor persons in rural areas. | Accord particular attention in the Policy and Plan to the needs of vulnerable and disadvantaged consumers, especially poor persons in rural areas, and make this thematic area a principal line of action. Expand the scope of the publication <i>El perfil del consumidor</i> (The Consumer Profile) to encompass rural areas. | Office of the President of the Council of Ministers, INDECOPI and other members of the Integrated National Consumer Protection System INDECOPI | I II |
| Give electronic commerce a more central role in the Policy and Plan. | Include consumer protection in electronic commerce as a principle line of action in the Policy and Plan, and incorporate consumer protection into high-level national policies such as the Bicentennial Plan on digital development. Expand the scope of <i>El perfil del consumidor</i> to encompass digital consumers. | Office of the President of the Council of Ministers, INDECOPI and other members of the Integrated National Consumer Protection System INDECOPI | I II |
| Encourage amicable conflict resolution and private sector ownership. | Fully implement existing means of alternative conflict resolution, such as consumer conciliation, mediation and arbitration. Encourage providers to settle disputes without outside mediation. | Office of the President of the Council of Ministers, INDECOPI and other members of the Integrated National Consumer Protection System Office of the President of the Council of Ministers, INDECOPI and other members of the Integrated National Consumer Protection System | II II |
| Strengthen cooperation between members of the National Integrated Consumer Protection System, especially with regard to the participation of regional and local governments in consumer protection. | Appoint consumer protection focal points in regional and municipal governments. Raise awareness of the consumer information initiatives launched by members of the National Integrated Consumer Protection System, such as "identicole", an initiative of the Ministry of Education, and "Callapp", an initiative of the National Quality Standards Institute. Expand educational, advisory and information-sharing activities in order to integrate them fully into school curricula and organize training for teaching staff. | Office of the President of the Council of Ministers and regional and local governments INDECOPI INDECOPI and Ministry of Education | I II II |

Voluntary peer review
on consumer protection law and policy: PERU

| Main recommendations | Specific recommendations | Target audience | Priority: I (high), II (medium), III (low) |
|---|---|--|--|
| Institutional framework | | | |
| Strengthen the efforts of institutions responsible for consumer protection to protect vulnerable and disadvantaged consumers, especially poor persons in rural areas. | Strengthen the capacities of INDECOPI's regional offices in education, guidance and the dissemination of information to vulnerable and disadvantaged consumers, especially in indigenous languages and using appropriate and adapted means of communication. | INDECOPI | I |
| | Expand campaigns to educate persons living in poverty and/or in rural areas through multilingual initiatives such as the Consumption Map, the Consumer Decalogue and the "Todos somos consumidores" campaign, and carry out joint actions with institutions with a presence in places with a greater concentration of vulnerable and disadvantaged consumers, especially persons living in poverty and/or in rural areas, such as the Ministry of Education, the National Anti-Discrimination Committee and the municipalities. | INDECOPI and other members of the Integrated National Consumer Protection System | I |
| Reforzar la protección del consumidor en el comercio electrónico. | Develop a plan of action to address specific aspects of the digital economy such as online advertising, electronic payment systems and online dispute settlement. | INDECOPI | I |
| | Continue to participate in regulatory processes related to the digital economy that have an impact on consumer protection, such as private transport in the sharing economy. | INDECOPI | III |
| | Continue to roll out educational, guidance and information-sharing mechanisms for consumers and businesses operating in the field of electronic commerce, including running campaigns (such as the "Check" initiatives) to increase knowledge of other areas of the digital economy, such as hosting, messaging platforms and the fintech sector. | INDECOPI | I |
| | Explore the possibility of establishing a specialized unit to exercise oversight of electronic commerce. | INDECOPI | I |
| | Promote online dispute settlement through mechanisms such as the "Concilia Fácil" virtual platform, especially for cross-border conflicts, by offering businesses incentives to use them. | INDECOPI and other members of the Integrated National Consumer Protection System | I |
| | | | |

Voluntary peer review
on consumer protection law and policy: PERU

| Main recommendations | Specific recommendations | Target audience | Priority: I (high), II (medium), III (low) |
|--|---|--|--|
| Institutional framework | | | |
| Strengthen the consumer product safety network. | Introduce an alerts system; establish formal channels of communication between the authorities responsible for product recalls; take further measures to educate and raise awareness among authorities, consumers, suppliers and consumer associations; and work in coordination with the media to increase the effectiveness of the alerts system. | INDECOPI, Directorate General of Environmental Health and Food Safety, and Directorate General of Medicines, Supplies and Drugs (and other expert bodies as required) | I |
| | Increase the use of laboratory testing, for example, by drawing on the laboratories of the National Tax Administration and Customs Authority and/or certifying private laboratories. | INDECOPI, Directorate General of Environmental Health and Food Safety, Directorate General of Medicines, Supplies and Drugs, and National Tax Administration and Customs Authority | II |
| | Collate reports on consumer accidents from hospitals and clinics. | National Health Authority, INDECOPI, Directorate General of Environmental Health and Food Safety, and Directorate General of Medicines, Supplies and Drugs (and other expert bodies as required) | II |
| | Monitor products that have been withdrawn from other markets and, if required, prevent them from being marketed in Peru. | INDECOPI, Directorate General of Environmental Health and Food Safety, and Directorate General of Medicines, Supplies and Drugs (and other expert bodies as required) | II |
| | Introduce safety standards for products imported through electronic commerce that are harmonized between suppliers and consumers. | INDECOPI, Directorate General of Environmental Health and Food Safety, and Directorate General of Medicines, Supplies and Drugs (and other expert bodies as required) | II |
| | Build capacity through training courses for judges, businesses (especially- micro and small businesses) and consumer associations, focusing on their duties in respect of product safety. | INDECOPI, Directorate General of Environmental Health and Food Safety, and Directorate General of Medicines, Supplies and Drugs (and other expert bodies as required) | II |
| | Ensure mutual assistance between INDECOPI and the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators in the performance of their duties, in accordance with the principles of distribution of powers and sincere cooperation. | INDECOPI, Office of the Superintendent of Banking and Insurance | I |
| | Strengthen inter-agency cooperation on consumer protection in financial services. | INDECOPI, Ministry of Justice | I |
| Strengthen inter-agency cooperation on consumer privacy and data protection. | | | |

Voluntary peer review
on consumer protection law and policy: PERU

| Main recommendations | Specific recommendations | Target audience | Priority: I (high), II (medium), III (low) |
|---|--|--|--|
| Institutional framework | | | |
| <p>Improve internal processes so as to maximize the impact of INDECOPI's actions.</p> | Bring class actions before the courts. | INDECOPI | I |
| | Organize training for INDECOPI and consumer associations on collective actions brought before the courts. | INDECOPI and consumer associations | I |
| | Continue to prioritize measures to combat discrimination against consumers in the marketplace. | INDECOPI | I |
| | Make the calculation of consumer detriment a criterion for prioritization under the Annual Oversight Plan. | INDECOPI | II |
| | Publish and disseminate the results of audits and warning measures issued by INDECOPI's Consumer Protection Commission No. 3 and disseminate the details of non-compliance penalties imposed on companies more widely, using the "Check on the Seller" platform. | INDECOPI | II |
| | Introduce a requirement for lower-instance bodies to comply with all rulings of the Specialized Chamber for Consumer Protection. | INDECOPI | III |
| | Strengthen international cross-border cooperation both for the digital economy (with countries where companies operating in the Peruvian digital markets are based) and for tourists and cross-border consumers. | INDECOPI | I |
| | Include provisions on cross-border conflict resolution in consumer protection agreements concluded with other countries. | Office of the President of the Council of Ministers and INDECOPI | I |
| | Further increase participation in international forums, networks and organizations such as the Ibero-American Forum of Government Consumer Protection Agencies, the International Consumer Protection and Enforcement Network, OECD, OAS and UNCTAD. | INDECOPI | II |
| | Extend INDECOPI's involvement in the OAS Consumer Safety and Health Network. | INDECOPI | II |
| Explore the possibility of continuing to operate the successful INDECOPI-COMPAL Consumer Protection School. | INDECOPI | III | |

**Voluntary peer review
on consumer protection law and policy: PERU**

| Main recommendations | Specific recommendations | Target audience | Priority: I (high), II (medium), III (low) |
|---|--|---|--|
| Participation of the associative and private sectors | Explore new ways of funding consumer associations, such as competitive grant funds, and allow associations to use public funds to cover their running costs. | INDECOPI | I |
| | Encourage consumer associations to carry out educational campaigns. | INDECOPI | I |
| | Train the staff of consumer associations on topics such as communication, management and fundraising. | INDECOPI and consumer associations | II |
| | Reconvene the National Consumer Congress to bring the entire associative network together with suppliers and public institutions with a view to identifying emerging issues and new lines of cooperative action. | INDECOPI | III |
| | Promote a culture of consumer protection among micro- and small businesses, especially in the informal sector. | INDECOPI, Ministry of Production, Foreign Trade Society of Peru and suppliers | I |
| | Continue to support trade watchdogs and to promote methods of dispute settlement that do not involve external mediation. | INDECOPI, suppliers. | II |
| | Promote self-regulatory and co-regulatory initiatives. | Office of the President of the Council of Ministers, INDECOPI and other members of the Integrated National Consumer Protection System | III |
| | Promote private sector participation, with specific activities for the informal sector. | Develop a system of voluntary compliance with guidelines and training, and check that voluntary compliance programmes are effective and fit for the purpose of regulating sanctions, and that they are properly applied and are maintained over time. | INDECOPI, and suppliers. |

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ANNEX

INSTITUTIONS INTERVIEWED FOR THE PREPARATION OF THE REPORT

State institutions

Municipalidad Metropolitana de Lima (MML) – Lima Metropolitan Municipal Council

Defensoría del Pueblo (DP) – Office of the Ombudsman

Ministerio de Salud, Dirección General de Medicamentos, Insumos y Drogas (DIGEMID) – Directorate General for Medicines, Medical Supplies and Drugs of the Ministry of Health

Ministerio de Salud, Dirección General de Salud Ambiental (DIGESA) – Directorate General of Environmental Health of the Ministry of Health

Ministerio de Salud, Superintendencia Nacional de Salud (SUSALUD) – National Health Authority of the Ministry of Health

Ministerio de Justicia y Derechos Humanos, Dirección General de Transparencia, Acceso a la Información Pública y Protección de Datos Personales (DGTAIPD) – Directorate General for Transparency, Access to Public Information and Personal Data Protection of the Ministry of Justice and Human Rights

Ministerio de Justicia y Derechos Humanos, Comisión Nacional Contra la Discriminación (CONACOD) – National Anti-Discrimination Committee of the Ministry of Justice and Human Rights

Instituto Nacional de Calidad (INACAL) – National Quality Standards Institute

Ministerio de Agricultura y Riego (MINAGRI) – Ministry of Agriculture and Irrigation

Ministerio de Comercio Exterior y Turismo (MINCETUR) – Ministry of Foreign Trade and Tourism

Ministerio de Economía y Finanzas (MEF) – Ministry of the Economy and Finance

Ministerio de Educación (MINEDU) – Ministry of Education

Ministerio de Transportes y Comunicaciones (MTC) – Ministry of Transport and Communications

Ministerio de Cultura (MINCUL), Dirección de Políticas Indígenas – Indigenous Policies Directorate of the Ministry of Culture

Organismo Supervisor de la Inversión en Energía y Minería (OSINERGMIN) – Energy and Mining Investment Supervisory Authority

Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público (OSITRAN) – Public Transport Infrastructure Investment Supervisory Authority

Organismo Supervisor de Inversión Privada en Telecomunicaciones (OSIPTEL) – Private Investment in Telecommunications Supervisory Authority

Superintendencia Nacional de Servicios de Saneamiento (SUNASS) – National Sanitation Services Authority

Presidencia del Consejo de Ministros (PCM) – Office of the President of the Council of Ministers

Servicio Nacional de Sanidad Agraria (SENASA) – National Agricultural Sanitation Service

Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones (SBS) – Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators

Superintendencia del Mercado de Valores (SMV) – Securities Market Authority

Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT) – National Tax Administration and Customs Authority

Ministerio de la Producción (PRODUCE) – Ministry of Production

National Congress – Commissions

Comisión de Ciencia, Innovación y Tecnología – Science, Innovation and Technology Commission

Comisión de Transportes y Comunicaciones – Transport and Communications Commission

Comisión de Defensa del Consumidor y Organismos Reguladores – Consumer Protection and Regulatory Bodies Commission

Trade associations and businesses

Sociedad de Comercio Exterior del Perú (COMEXPERÚ) – Foreign Trade Association of Peru

Asociación Automotriz del Perú (AAP) – Automotive Association of Peru

Cámara Nacional de Turismo (CANATUR) – National Chamber of Tourism

Asociación de Empresas de Transporte Aéreo Internacional (AETAI) – Association of International Air Transport Businesses

Asociación Peruana de Empresas de Seguros (APESEG) – Peruvian Association of Insurance Businesses

Asociación de Bancos del Perú (ASBANC) – Peruvian Banking Association

Cámara Peruana de la Construcción (CAPECO) – Peruvian Chamber of Construction

Consejo Nacional de Autorregulación Publicitaria (CONAR) – National Council for the Regulation of Advertising

Asociación Nacional de Anunciantes del Perú (ANDA) – National Association of Advertisers of Peru

Fintech Perú – Association of Fintech Businesses of Peru

Kambista (a provider of online foreign exchange services)

Startup UNI (start up initiative of the National University of Engineering)

Comparabien (an online price and service comparison service)

Iniciativa empresarial UPC (business initiative of the University of Applied Sciences of Peru)

Civil society organizations

Consejo Nacional de Asociaciones de Consumidores y Usuarios del Perú (CONACUP) – National Council of Consumers and Users Associations of Peru

Asociación Peruana de Consumidores y Usuarios (ASPEC) – Peruvian Consumers and Users Association

Organismo Peruano de Consumidores y Usuarios (OPECU) – Peruvian Consumers and Users Authority

Asociación de Defensa del Consumidor ELEGIR – Consumer Protection Association

Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) – National Institute for the Defence of Competition and Protection of Intellectual Property)

Presidencia del Consejo Directivo – Office of the President of the Governing Board

Gerencia General (GG) – General Administration Office

Dirección de la Autoridad Nacional de Protección del Consumidor (DPC) – Directorate of the National Consumer Protection Authority

Servicio de Atención al Ciudadano (SAC) – Citizens' Advice Service

Órgano Resolutivo de Procedimientos Sumarísimos (OPS 1, 2, 3 and Lima Norte) – Summary Procedure Adjudicatory Body

Comisiones de Protección al Consumidor (CC1, CC2, CC3, CCLN) – Consumer Protection Committees

Sala Especializada en Protección al Consumidor (SPC) – Specialized Chamber for Consumer Protection

Junta Arbitral de Consumo (JAC) – Consumer Arbitration Board

Gerencia de Oficinas Regionales (GOR) – Regional Offices Administration Unit

Gerencia de Cooperación Técnica y Relaciones Internacionales (GCT) – Technical Cooperation and International Relations Office

Gerencia de Supervisión y Fiscalización (GSF) – Audit and Oversight Office

Gerencia de Promoción y Difusión (GPD) – Information and Awareness-Raising Office

Escuela Nacional de Defensa de la Competencia y de la Propiedad Intelectual del INDECOPI (ECP) – INDECOPI National School for the Protection of Competition and Intellectual Property

Comisión de Fiscalización de la Competencia Desleal (CCD) – Commission for the Investigation of Unfair Competition

Sala Especializada en Defensa de la Competencia (SDC) – Specialized Chamber for the Protection of Competition

