

Case of cross-border cooperation Arica - Tacna

The facts

The city of Tacna is located in the extreme south of Peru and the city of Arica in the extreme north of Chile, both being neighbouring cross-border towns. One of the modes of land transport between these cities is public passenger transport in collective taxis.

The provision of the service begins and ends in the authorized land terminals located in the cities of Tacna and Arica. In both cities, there is only one authorized land terminal for the provision of the Investigated Service. The maximum capacity of the vehicles is five passengers.

However, the intense commercial relationship between the cities of Arica and Tacna that generates a fluid international passenger transport, motivated the creation of the Mixed Group of Collective Passenger Transport between Tacna and Arica, in which authorities and carriers that provided the service participated between these cities.

At these meetings it was agreed to establish a quota system, expressly indicating the number of quotas that would correspond to each mode of transport (collective taxis or buses) based on the number of seats. Likewise, it was agreed to establish a permit system that would oversee the transport ministries in each country.

In 1990, the countries of Argentina, Bolivia, Brazil, Chile, Paraguay, Uruguay and Peru signed the International Land Transport Agreement (hereinafter, AITIT). Likewise, in December 2004, Chile and Peru signed the Arica and Tacna Road Passenger Transport Agreement.

To implement and monitor the provisions established in the aforementioned agreements, the transportation authorities of Peru and Chile held annual and semi-annual meetings in the cities of Tacna and Arica. In the framework of these meetings, the implementation of an exit mechanism for vehicles was discussed and approved.

The exit rule implemented established that, in Peru, 5 cars would be located on the 5 ramps of the terminal. The starting order would be given according to an assigned number. By 2013, 146 cars were working a day and 40 cars were parked. The other cars are located behind the ramp according to their role number.

For example, if the cars from Chile managed to get out (assigning them the numbers “4” and “5”, then the cars with the numbers “9” and “10” would enter their place; however, these cars could not leave until the cars with the assigned numbers “1”, “2” and “3.” came out. This mechanism would have been designed with the principle of fairness in the agreement in mind. Considering the number of seats assigned to collective taxis, the proportion would be 3 Peruvian cars and 2 Chilean cars. Under this scheme, it was ensured that the service providers always had passengers without the need to compete for prices, since part of this departure scheme was the existence of a common fee for the provision of the service.

The Investigation in Peru

In January 2012, the Peruvian competition authority (hereinafter Indecopi) became aware of an alleged collective taxi service agreement and undertook the corresponding investigation actions, which involved interviews with transporters and authorities of the sector, requests for information from different State entities and the agents who would have authorization to provide the service, compilation of the minutes of the meetings carried out by the Mixed Group of Collective Passenger Transport between Tacna and Arica, as well as interviews with the carriers in relation to the prices charged.

Through Resolution 037-2013 / ST-CLC-INDECOPI of December 27, 2013, Indecopi decided to initiate a sanctioning administrative procedure against 132 agents (31 Peruvians and 101 Chileans).

Indecopi supported the imputation of charges based on the minutes of the meetings between the representatives of the Peruvian and Chilean unions that provided the collective taxi service, in which the elaboration and implementation of an agreement to limit the provision was evidenced of the collective taxi service, as well as the implementation since 2009 of a consensual price regime based on the days of greatest demand.

However, the large number of agents investigated were of foreign nationality, which is why the case presented the difficulty of a legal framework that was not clear regarding the notification of administrative acts to persons domiciled abroad, so on 27 February 2014, a legal consultation was carried out with the Ministry of Justice.

By means of Official Letter 478-2004-JUS / DGDOJ of May 8, 2014, the inquiry was acquitted, stating that when a company is domiciled abroad, it is appropriate that they be required through consular channels to appoint a legal representative in Peru to make the notifications of the procedure in the domicile of this. If despite the request requested via consular representatives?, the company does not comply with setting a legal representative or does not have an address to which to make the request, the authority will be empowered to notify by publication in a newspaper with greater circulation of the city of the country of residence of the company.

As part of the notification process, difficulties were encountered in identifying the domicile of those investigated domiciled in Chile. Cooperation between competition agencies was relevant for this purpose. The National Economic Prosecutor's Office facilitated Indecopi to obtain the addresses of Chilean companies and individuals that provide land transportation service for passengers by collective taxis between the cities of Arica and Tacna.

The National Economic Prosecutor's Office through Resolution 585 of November 3, 2014, requested the remission of the relevant documents considered in the disciplinary administrative procedure initiated in Peru, which were forwarded on December 19, 2014, through Official Letter 116-2014 / ST -CLC-INDECOPI. Additionally, informal communications were made between Indecopi and the FNE, in order to report the status of the investigation.

Through Resolution 097-2017 / CLC-INDECOPI of December 1, 2017, Indecopi issued its final pronouncement, in which it indicated that the operation scheme of the Integrated Exit Role somehow limited the ability of service providers to compete in question, as carriers provide the service consecutively without being able to compete to attract passengers at any time.

However, it was verified that this rulesought to improve safety and quality conditions in the ground transportation service between Tacna and Arica. Additionally, the participation of the Peruvian and Chilean authorities was verified, for which reason the Commission concluded that the intervention of the authorities could generate legitimate confidence in the agents that their actions were in accordance with the law. Therefore, it decided not to sanction the investigated agents.

The investigation in Chile

In October 2013, the Chilean National Economic Prosecutor's Office (hereinafter "FNE") initiated an investigation into a possible price agreement and exit shifts adopted between the collective taxi operators that provide the international public passenger transport service between cities. from Arica in Chile and Tacna in Peru.

During the investigation, the FNE requested information from various public institutions and interviewed both collective taxi operators and representatives of the sector authority. Likewise, the FNE collaborated with the Peruvian INDECOPI, which was conducting a parallel investigation regarding the

same events. This collaboration included exchanges of non-confidential information, including public information (such as data to identify and notify the investigated persons) and internal information of the agency (referring mainly to the status and nature of their respective investigations, as well as their preliminary conclusions).¹

After analyzing the evidence gathered, the FNE concluded that more than 100 collective taxi operators, both Chilean and Peruvian, had or defined a system of exit shifts for each competitor and a minimum and maximum rate to be charged to the final public for their services. The investigation also made it possible to conclude that the agreement had been promoted by the transport authorities of both countries to avoid the large number of traffic accidents that competition between operators produced on the route.

Despite these findings, the FNE decided to close the investigation without filing legal action. In the first place, because even though public authorities can be sanctioned for engaging in anticompetitive conduct, the action to prosecute the transportation authority in this case was prescribed. Second, the FNE decided not to prosecute the collective taxi operators because:

- (i) The agreement would have been urged and approved by the public authorities of both countries. Although legally the participation of authorities does not exclude the responsibility of economic agents, it constitutes a mitigating factor by reducing awareness of illegality;
- (ii) The agreement had been publicly adopted;
- (iii) Despite constituting a price and frequency agreement, the agreement would have been motivated by the interest in reducing the large number of accidents that occurred on the route in the absence of shifts;
- (iv) The pursuit of several competitors would mean litigation costs that far outweigh its benefits; and
- (v) That INDECOPI had an investigation for the same events.

¹ A classification of the forms of cooperation between competition agencies can be found in the International Competition Network, Anti-cartel Enforcement Manual, Chapter 9, 2013. Available at: <https://www.internationalcompetitionnetwork.org/portfolio/international-cooperation/>