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Challenges Faced by Small Agencies and those in Developing Economies

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-- Dominican Republic --

The entry into force of the competition law in the Dominican Republic: Achievements and challenges of a young competition authority

Summary: *The General Law on Defense of Competition of the Dominican Republic, despite having been approved in 2008, entered into full force on January 6th, 2017, with the appointment of the first Executive Director at the National Commission for the Defense of the Competition (PRO-COMPETENCIA). This document describes the actions taken since September 2016 for the complete enforcement of the legal powers of PRO-COMPETENCIA, for its institutional development and for the defense, promotion and advocacy of the competition. In the same way, it analyzes the challenges faced by a young competition authority in a developing Caribbean economy.*

1. On January 16th, 2008, the Executive Power promulgated the General Law no. 42-08 on Defense of Competition, to promote and defend an effective competition to increase economic efficiency and create welfare among society. Concerted practices and anti-competitive agreements, the abuse of dominant position and unfair competition are typified by this law, which also establishes the administrative procedure for sanctioning and determines the parameters for the imposition of sanctions for infractions of the regulations of competition.
2. Equally, in the field of competition advocacy, it contemplates the simplification of administrative procedures that may attempt against free enterprise and competition, the review of legal acts and state aids that may affect the conditions of competition on the markets, as well as the relationship of the national competition authority among market regulators.
3. For such purposes, the National Commission for the Defense of Competition (PRO-COMPETENCIA) was created, an autonomous and decentralized body of the State with full administrative, technical and financial independence, whose objective is to promote and guarantee the existence of effective competition to increase economic efficiency in the markets of products and services, through the execution and application of competition policies and legislation and the exercise of its investigative, report, regulatory, decisive, resolute and sanctioning faculties. The Commission is composed of two bodies: the Board of Directors, as the decision-making body, and the Executive Board, as the governing body.
4. In 2011, the first members of PRO-COMPETENCIA Board of Directors were appointed by the National Congress, and so it began the transition phase for the eventual entry into force of Law no. 42-08, which by virtue of the *vacatio legis* established in its article 67, would take effect immediately when the members of the Board of Directors and the Executive Director of the entity were appointed. Two members of the Board of Directors were appointed subsequently, in 2013 and 2015, in substitution of the former

President of the Board of Directors, went to occupy a position in the financial administration of the State, and of a resigning member.

5. In September 2016, after its appointment as a member of the Board of Directors by the Chamber of Deputies, the Council elected its current President. On January 6th, 2017, the first Executive Director of PRO-COMPETENCIA was appointed, and the General Law for the Defense of Competition entered into full force.

6. Next, will be exposed the actions and achievements reached from September 2016 to present date to complete the general legal framework for the competition practice, to strengthen the institutional operations and for the application of the competition law, through the exercise of attributions in matters of defense, promotion and advocacy of competition.

7. These are based on the Institutional Multi-annual Strategic Plan 2017-2020, considering the lines of action related to competition contained on the National Development Strategy 2030, approved by Law no. 1-12 on January 25th, 2012. This plan is built around three main strategic objectives:

1. Administer and apply the principles, powers and constitutional mandate established in the General Law of Defense of Competition.
2. Promote the culture of free and fair competition and its benefits among economic actors and society in general.
3. Strengthen organizational management capabilities.

1. Defense of Competition

8. To date, the Executive Directorate has ordered ex officio the initiation of two investigation procedures due to the existence of reasonable indications to presume the performance of practices contrary to competition regulations.

9. In January 2017, through Resolution no. DE-001-2017, an investigation was initiated in the market of the production, marketing and distribution of beer in the Dominican territory, due to the existence of reasonable indications to presume the conduct of abuse of a dominant position by the economic agent which maintains the largest market share within the beer industry.

10. Also, in August 2017, through Resolution no. DE-014-2017, it was decided to start an investigation in the market of the production and marketing of wheat flour in the Dominican Republic, by virtue of the existence of facts that could constitute reasonable evidence to presume the performance of concerted practices and anti-competitive agreements by economic agents.

11. By complaint, since April 2017, pursuant to Resolution no. DE-002-2017, the Executive Directorate instructs a procedure of investigation in the market of provision of services through "Casas de Conductores" / "Casas Cárcel" (Drivers houses / Prison Houses), by virtue of the existence of facts that may constitute reasonable indications of abuse of dominant position in said market by insurance companies shareholders of a commercial company that participates in said market.

12. Concomitantly, through Resolution no. DE-005-2017 of May 2017, the Executive Directorate, ordered the initiation of an investigation into the existence of facts that may constitute reasonable evidence to presume the performance of acts of unfair competition

for non-compliance with rules by economic agents of the retail market. The Directing Council, through its Resolution no. 014-2017 of June 2017, declared inadmissible a hierarchical appeal filed by the economic agents investigations against the aforementioned resolution.

13. Also, the Executive Directorate ordered the filing of inadmissible complaints related to the ice markets, telecommunications and “Casas Cárcels”. The Executive Directorate, in addition, has issued more than 24 resolutions that decide on requests for confidentiality of information provided by economic agents in the course of investigation procedures.

14. It is necessary to highlight that PRO-COMPETENCIA has enabled an email address so that those people who wish to collaborate with the free and fair competition, in an anonymous way, can send information to the agency. In this way, any interested party can provide information without having to submit a formal complaint about the facts allegedly contrary to the competition, which facilitates the detection of violations of the competition regulations.

2. Promotion and Advocacy of Competition

15. In terms of promotion, PRO-COMPETENCIA uses its social networks to promote the advantages of a free and fair competition, through capsules on the content of competition regulations and the dissemination of requirements and procedures for filing complaints. Likewise, a training program has been developed for business associations, public entities, representatives of the Public Prosecutor's Office and the judiciary, to sensitize all the actors of the economy about the entry into force of the General Law for the Defense of Competition, its implications and benefits.

16. In the exercise of its competition advocacy faculties, PRO-COMPETENCIA has carried out two important studies of competitive conditions in the bread market, and in the markets of transport of cargo in land, urban passenger transport, tourist passenger transport and interurban transport. These studies are available for consultation in the institutional portal. Currently, a study is being carried out on the conditions of competition in the bottled water market, on the updating of the study on the transport of cargo in land market and on the revision of the general regulations on public purchases and tax exemptions.

17. PRO-COMPETENCIA participates in the Committees for the Creation of Quality Standards of the Dominican Institute for Quality (INDOCAL). Likewise, it issued an official position on the Master Plan of the National Pharmaceutical Policy.

18. In the same way, the Board of Directors issued a binding opinion on the Telecommunication Infrastructure Sharing Regulations project prepared by the Dominican Telecommunications Institute (INDOTEL). Also, a non-binding opinion was addressed to the Monetary Board on the Asset Evaluation Regulations, with the recommendations of PRO-COMPETENCIA to guarantee access to credit for micro, small and medium-sized companies.

19. In May 2017, the Board of Directors ordered the Executive Directorate to prepare a report on the simplification of procedures for obtaining and renewing health records in the Dominican Republic, processed by the General Directorate of Drugs, Foods and Health Products (DIGEMAPS) of the Ministry of Public Health and Social Assistance, as

well as the review of the state legal acts related to these procedures, in force or in the process of approval, of general or normative scope or of concrete and particular effects. This report is in the final phase of preparation.

20. In June 2017, the general guidelines for compliance plans of economic agents in matters of competition policy were approved (Resolution No. 013-2017), at the proposal of the Executive Directorate. With these guidelines, it is sought to provide economic agents with an effective tool to prevent the commission of anti-competitive acts, reduce risks and legal and economic contingencies, as well as generate security and certainty regarding the activities permitted and prohibited by competition regulations by establishing internal controls in their companies.

21. On the other hand, the Observatory of Market Competition Conditions was created, with the general objective of monitoring the conditions of competition in markets, to identify risks that enhance the possibility of anti-competitive practices. Among the criteria used to monitor and prioritize the markets in the Observatory's quarterly reviews are the weighting in the basic family food basket and the high demand, economic growth, market characteristics, essential intermediate inputs, restrictive regulations and the concerns of the society.

22. To date, two reviews of the Observatory have been carried out, where the analyzed markets are classified into four alert levels (maximum priority, high priority, moderate priority and low priority).

3. Institutional strengthening

23. Since September 2016, all efforts focused on creating the foundations for the eventual entry into full force of the General Law of Defense of Competition. We worked on strengthening the internal structure of PRO-COMPETENCIA, through the approval of a new organizational design and the recruitment of human talent with solid training and vast experience, especially professionals of Law and Economics, with national and international studies of high level.

24. Thereby, a multidisciplinary technical team was formed to support the Executive Directorate in its studies, analysis and research, and the personnel structure of the Board of Directors is consolidated. A national and international training program is developed to consolidate the training of specialized personnel. At present time, PRO-COMPETENCIA is completing the habilitation of its institutional headquarters, to provide its staff with adequate spaces for the proper performance of their functions.

25. Also, work is being done to strengthen internal management. In administrative and financial matters, the controls of the System of Financial Administration of the State (SIAFE) were implemented, including the integration to the transactional portal of public purchases, and of the National System of Internal Control (SIAFE), with its Basic Internal Control Standards (NOBACI). In terms of public function, PRO-COMPETENCIA has raised its rating in the Public Administration Monitoring System (SISMAP).

26. The agency is completely aligned with the parameters of ethics and institutional integrity, obtaining a 100% rating on its transparency portal. In the same way, PRO-COMPETENCIA implements the Government's Information and Communication Technology Standards (NORTIC), and complies with the government's budget, planning and development requirements. Different procedures and internal policies have been

established and approved to guarantee the correct performance of the personnel, compliance with current regulations and the continuity of the institutional work.

27. To complete the general legal framework of competition in the country, the Board of Directors initiated a broad and participatory public consultation procedure to submit to the Executive Branch the draft of the Bylaw for the Application of the General Law for the Defense of Competition, which to date, is awaiting its promulgation.

28. In this sense, it was also approved by Resolution no. FT-14-2016 of the Board of Directors, the guidelines and criteria for the establishment of confidentiality reservations on probative material in light of the provisions of article 41 of Law no. 42-08, to provide predictability and legal security to economic agents, within the framework of administrative procedures instructed by PRO-COMPETENCIA.

29. Through Resolution no. 01-2017, the general, technical and economic criteria were established for the evaluation of the conditions of competition of the markets to be used by PRO-COMPETENCIA. It was established the classification of the information that the PRO-COMPETENCIA bodies generate or obtain from third parties in the exercise of their attributions, through Resolution no. 012-2017. With the aforementioned resolutions, the aim is also to provide predictability and legal security to the economic agents subject to the application of competition regulations.

30. Finally, it is necessary to highlight the establishment and strengthening of inter-institutional relations with government bodies that are related to the work of PRO-COMPETENCIA, with international counterparts and with international cooperation agencies, in order to share information and knowledge.

4. Challenges of a young competition authority in a developmental economy

31. Almost a year after the entry into force of the General Law for the Defense of Competition, with a number of ongoing initiatives for defense, advocacy and promotion of competition in the Dominican Republic, and the full activation of the national authority of competence, we have identified current and future challenges in the application of competition policy and regulations, and in the institutional development of the agency.

4.1. Main challenges:

1. Lack of a competition culture, due to general ignorance of current competition regulations, the lack of a competition authority in full operation, and the businesses practice conducted in a framework that does not naturally encourage free and loyal competition.
2. Little accessibility to address issues of competition advocacy with market regulatory bodies, for review and dictation of sectoral competition regulations.
3. Capture and retention of the necessary resources to operate the agency optimally.

4.2. Specific challenges:

4.2.1. *Defense of competition:*

- The short period established by the Law for the investigation by the Executive Directorate (12 months), requires important human and economic efforts to instruct files within this period, guaranteeing due administrative process. An eventual modification to the General Law of Defense of Competition must address this term.
- The absence of a coercive legal mechanism that establishes the obligatory nature of the collaboration of third parties with the competition authority delays investigations by the Executive Directorate.
- The lack of knowledge on the part of economic agents of the competition rules and the mission of PRO-COMPETENCIA, results in fear of collaborating with the investigation procedures that the institution is working on, as well as of filing complaints.
- Lack of knowledge on the part of professionals of Law and Economy about the competition rules and the procedures carried out by PRO-COMPETENCIA for the defense of competition.
- Lack of knowledge of Competition Law by judicial bodies. To such ends, with international cooperation, it is necessary to establish a training program for judges and prosecutors.
- Eventual reform of the General Law of Defense of Competition, to incorporate non-standardized anti-competitive conducts, strengthen the administrative procedure for the defense of competition and the sanctioning regime, increasing the amount of sanctions, which to date, has an amount approximate maximum of the equivalent in local currency to USD 950,000.00.

4.2.2. *Promotion and advocacy of competition:*

- Lack of openness on the part of the regulating entities of the market to review, propose and dictate jointly the regulation of competition that will govern the productive and professional markets.
- Little accessibility by public bodies to address issues related to competition.
- Limited human and economic resources to cover the national territory for the promotion of competition.

4.2.3. *Institutional strengthening:*

- Acquisition and start-up of technological infrastructure that guarantees the physical and digital security of the information obtained and generates PRO-COMPETENCIA.
- Complete the human platform required to carry out the duties of the Commission with personnel with high-level professional training and experience, maintain a constant training program and establish staff retention mechanisms.
- Maintain and strengthen the autonomy of the institution, and guarantee the financial viability of its operations with a view to the necessary expansion, with budgetary increases and contributions from international cooperation.
- Strengthen cooperation and the transfer of information and knowledge with counterpart organizations.