

Unclassified

English - Or. English

7 November 2022

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Global Forum on Competition**

**SUBSIDIES, COMPETITION AND TRADE – Contribution from the Dominican Republic**

**- Session II -**

1-2 December 2022

This contribution is submitted by the Dominican Republic under Session II of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/sctr](http://oe.cd/sctr).

Please contact Ms. Lynn Robertson [E-mail: [Lynn.Robertson@oecd.org](mailto:Lynn.Robertson@oecd.org)], if you have any questions regarding this document.

**JT03506877**

## *Subsidies, Competition and Trade*

### *State Aid And Its Impact On The Conditions Of Competition: An Approach To Its Treatment*

#### **- Contribution from the Dominican Republic<sup>1</sup> –**

#### **1. A look at the interaction of competition between subsidies and state aid.**

1. Competition has been understood as the form of the economic relationship between those who offer a service and those who demand it, which, when it exists, makes markets function properly, resources are allocated efficiently and consumers benefit from this. For its part, the Constitutional Court of Colombia has defined free competition as:

*"Free competition, on the other hand, consists of the power of all entrepreneurs to direct their efforts, business and production factors to the conquest of a market, within a framework of equal conditions. According to constitutional jurisprudence, this freedom includes at least three prerogatives: (i) the possibility of competing in the market, (ii) the freedom to offer the commercial conditions and advantages deemed appropriate, and (iii) the possibility of contracting with any consumer or user. In this order of ideas, this freedom is also a guarantee for consumers, who by virtue of it can contract with whoever offers the best conditions within the framework of the law and benefit from the advantages of the plurality of bidders in terms of price and quality of goods and services, among others. <sup>2</sup>"*

2. Competition works as a stimulus for companies to make efforts and innovate in their products or services, in order to be able to penetrate the taste of consumers<sup>3</sup>.

3. In this sense, according to Soto Pineda, a competition policy or the functioning of the competition authority focuses on providing the market or the economic system with the necessary guarantees so that economic agents can compete in a scenario of free and fair

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<sup>1</sup> Presentation proposal: María Elena Vásquez Taveras, President of the National Council for the Defense of Competition, former Director of the Center for Constitutional Studies of the Constitutional Court, PhD candidate in Constitutional Law and Public Liberties (University of Castilla La Mancha), Master in Constitutional Jurisdiction (UCLM), Constitutional Law, concentration in Constitutional Jurisdiction (UCLM); (PUCMM) and Legal and Political Philosophy. Higher Diplomacy (Center for Diplomatic and Strategic Studies, Paris, France). Master's Degree in Legal and Political Philosophy from Universidad Carlos III. Specialization in Competition Law and Policy at Lead University, Costa Rica. Professor of Competition Law, Constitutional Law and Civil Liability.

<sup>2</sup> Decision C-197 of March 14, 2012.

<sup>3</sup> National Commission for Markets and Competition (2021). Guide on The benefits of competition for consumers.

competition<sup>4</sup>, promoting a better functioning between supply and demand<sup>5</sup>. This is because the market alone cannot guarantee the best allocation of resources due to a possible abuse that economic agent's t of their market power.

4. Competitive markets create economically efficient levels of production through a process of rivalry between firms whose objective is the creation of value. This generates lower prices and more choice for consumers. However, many markets do not meet the conditions of perfect competition, and there are also situations where prices do not send the correct information to consumers and producers, causing inefficient markets<sup>6</sup>, this is known as market failure.

5. Thus, Competition Law has been organized in two ways to deal with such market conditions. First, one that pursues conduct that is aimed at deceiving, such as unfair competition, and another that pursues conduct that has the capacity to cause distortions in the market, such as: concerted practices and abuse of dominant position.

6. Nevertheless, not only economic agents can cause distortions in the market; the State, as a regulatory entity that participates in the market, is a potential distorter through legislative initiatives that can create barriers to entry, unnecessary formalities or create State aid policies, with the potential to grant advantages to a given economic agent and place it in a better position in the market in which it participates. Therefore, as Böge points out, "state aid has the capacity to distort the competitive framework, complicate the investment landscape and promote a system of legal uncertainty"<sup>7</sup>.

7. However, state intervention to correct market failures has been widely accepted, particularly through subsidies, which represent unrequited current payments that government units make to firms based on the levels of their productive activity or the quantities, or values, of the goods or services they produce, sell or import<sup>8</sup>. These are used to transfer social wealth to certain groups for the purpose of influencing the supply of or demand for a good. They serve to transfer social wealth to certain groups for the purpose of influencing the supply of or demand for a good.

8. In other cases, the State intervenes in the economy with the purpose of granting preferential treatment that affects market competition in order to activate and economically invigorate certain geographical areas, such as the Haitian border in the Dominican case and in the case of MSMEs led by women.

9. It is important to clarify that any definition of subsidies in regards to statistics or in international legislations does not cover the diversity of instruments used, and their comparison must take into account the context for which they are used for. Subsidies take various forms such as tax exemptions, direct monetary transfers or in-kind benefits granted by the government that affect the costs of the recipient companies. The same country may have several definitions for different purposes.

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<sup>4</sup> Soto Pineda, Jesús (2014). "The defense of competition and the scope of state aid in the framework of free trade agreements". *Revista Vuniversitas*; Colombia; pp. 318-321.

<sup>5</sup> Amadeo Petitbo, Juan (2003). "La defensa de la competencia en España a partir del artículo 38 de la Constitución Española", *Revista Economía Industrial*; Spain; pp. 128-129.

<sup>6</sup> Pindyck, R. (2009). *Microeconomics* (Seventh ed.). Pearson Education; Madrid.

<sup>7</sup> Böge, Ulf (2006). "State imposed Restrictions of Competition and Competition Advocacy, Challenges of Addressing State Imposed or Facilitated Restraints," *ABA Spring Meeting Journal*.

<sup>8</sup> Central Bank of the Dominican Republic (2007). *National Accounts of the Dominican Republic, Reference Year 2007*.

10. Regarding state aid, it is also necessary to delimit its concept. The General Law on the Defense of Competition, no. 42-08 establishes that a state aid may become a "... measure that may unjustifiably create barriers to the market or that generates the possibility of unfair competition in the market".<sup>9</sup> However, beyond such description, the legislator has not legally defined this concept and has not established the criteria to form the latter, which makes the investigation process difficult when trying to identify a state aid.

11. The European Union defines this concept as "... aid granted by States or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods".<sup>10</sup> In the absence of a broad interpretative development on this concept, the European Commission proceeded to define the constituent elements of State aid on the basis of a brief compilation of relevant case law precedents in this matter, indicating that these elements are circumscribed in the following questions:<sup>11</sup>

- Who are the subjects that the measure(s) is intended to benefit?
- Does the measure(s) involve the use of public funds?;
- Does the measure(s) involve promoting an advantage in the development of the economic activity of its beneficiary(ies)?
- Is (are) the measure(s) selective among its beneficiary(ies) and those agents that exercise the economic activity; and,
- Does the measure(s) incentivize anti-competitive effects?

12. Similarly, the doctrine has established that the notion of State aid must "seek an economic advantage, be of public origin and be selective in nature"<sup>12</sup>. This essentially means that the constituent element of a State aid is that it causes a threat to competition and consequently to the market where the aid is applied. Some doctrines even argue that this effect on competition through State aid can be reflected even in other jurisdictions outside the domestic market. This, through free trade agreements, almost always establish a regime of incentives and state aid but only for companies owned by the native capital stock, not for foreign companies that decide to compete in those markets.

13. Faced with this fear, the European Union, in its Treaty on the Functioning of the European Union, decided to identify the cases under which State aid would be considered compatible with competition, identifying three cases, such as: The first refers to "State aid which is of a social nature for consumers"; The second case refers econdly, aid that "is approved to offset the damage caused by natural disasters"; Third scenario responds to a historical issue that is no longer applicable.

14. This reflects the fact that the application of state aid and subsidies in competition is not always negative, depending on the context, the magnitude of the aid and the ultimate purpose. In addition, the granting of subsidies or state aid is favorable whenever the market

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<sup>9</sup> The General Law on the Defense of Competition, no. 42-08 Art. 15.

<sup>10</sup> Consolidated Version of the Treaty on the Functioning of the European Union. Art. 107.1.

<sup>11</sup> European Commission. Commission Communication on the concept of State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

<sup>12</sup> Signes de Mesa, Juan Ignacio (2013). "Derecho de la competencia y crisis económica: El régimen de ayudas públicas y de concentraciones en el sector financiero". Editorial Aranzadi; Spain.

cannot produce efficient results, for example in market failures or when there are redistributive purposes that generate a more socially favorable result.

15. Classical economic theory states that subsidies can distort competition between firms in the absence of market failures. The influence of the subsidy is to increase the quantity produced and consumed, but maintaining a higher selling price offered to the buyer, causing an increase in marginal cost and inefficient overproduction<sup>13</sup>.

16. Another element to consider is the country and the size of its market. The market of developed countries such as Europe and the USA is not the same as that of smaller countries with small markets and little capacity for technological innovation. A North American or European company that intends to invade a Latin American country's market, taking advantage of a free trade agreement and the large state subsidies they receive in their country of origin, are elements that undoubtedly generate strong distortions in Latin American markets and their local economic agents.

## 2. Competition law and state aid: Dominican Republic

17. An important observation is that subsidies are not only a response to economic reasons, but also happen because of lobbying and political pressures. After the 2008 worldwide financial crisis, subsidies have increased in countries and sectors, exceeding measures such as tariffs and other non-tariff measures. Aid granted to the financial sector of the European Union Member States from October 1, 2008 to October 1, 2010 was 4,588.9 billion euros.<sup>14</sup> Another important case is subsidies to the agricultural sector. The Estimated Producer Support Estimate (PSE) of the Organization for Economic Cooperation and Development (OECD) countries in 2021 was 245,374.73 million dollars<sup>15</sup>.

18. The Dominican Republic has granted subsidies to the electricity sector since the year 1974. The main reasons have been to increase the payment capacity of consumer in conditions of poverty; to reduce the social impact of economic crises; to encourage technological change, among others. Méndez argues that subsidies in the electricity sector have caused "pressure on public spending; distortions in the decisions of economic agents; financial unsustainability and little autonomy of the industry and disproportionate increases in some tariff blocks"<sup>16</sup>. In addition, a special border development zone has been created by Law No. 28-01 to promote private investment through special tax incentives. The state spent 39,350 million pesos from the public budget on subsidies in 2020<sup>17</sup>.

19. For such assumptions, dominican competition laaw), establishes as one of the prerogatives of this institution is the analysis and weighing of state aid, for its possible aversion to competition, as observed in Article 15, when it establishes:

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<sup>13</sup> Parkin, Michael, and Eduardo Loría Díaz (2010). "Microeconomía versión para Latinoamérica". Ninth edition; Pearson Educación; Mexico.

<sup>14</sup> Signes de Mesa, Juan Ignacio (2013). "Derecho de la competencia y crisis económica: El régimen de ayudas públicas y de concentraciones en el sector financiero". Editorial Aranzadi; Spain.

<sup>15</sup> Organization for Economic Cooperation and Development (2022). Agricultural Statistics. Available at: [https://doi.org/10.1787/agr\\_outlook-2013-es](https://doi.org/10.1787/agr_outlook-2013-es).

<sup>16</sup> Méndez, Francisco Antonio (2009). Subsidy Policy in the Electricity Sector of the Dominican Republic. In *Desarrollos Regulatorios de Iberoamérica*. Santo Domingo.

<sup>17</sup> International Monetary Fund (IMF). 2022. 20 of 10. <https://data.imf.org/regular.aspx?key=60991457>.

*"The State shall not adopt or maintain, with respect to public enterprises or those to which it grants delegations by any contractual form, any measure that could unjustifiably create barriers to the market or generate the possibility of unfair competition in the market.*

*Paragraph. - The National Commission for the Defense of Competition shall examine the effects on the conditions of competition of subsidies, state aid or incentives granted to public or private enterprises, charged to public resources, and shall proceed, as the case may be, to request the public authorities, by means of a reasoned recommendation report, the suppression or modification of such subsidies, as well as the adoption of other measures leading to the reestablishment of competition".*

20. As we can appreciate, Law No. 42-08 uses certain criteria that is also shared by the Treaty on the Functioning of the European Union, such as "impossibilities to compete". However, our regulations do not establish any criteria to identify or establish when a subsidy or state aid is unjustified or in which actions a state aid can create or generate impossibility to compete. Therefore, from the Dominican regulations it can only be extracted that a differentiated treatment to compete is possible in certain constitutional exceptions established in articles 50.1 and 221 of the Constitution, which allow differentiated treatments for very specific conditions, such as the cases of monopolies for the benefit of the State and the cases of national security, according to article 50.1. As well as the exceptions of Article 221 of the Constitution which establishes, "the law may grant special treatment to investments located in areas with a lower level of development or in activities of national interest, particularly those located in border provinces".

21. The lack of specific guidelines in the competition law on the treatment of subsidies and state aids makes the control of these issues quite complex, given that their treatment will be completely casuistic. This would require a market study and based on the conclusions, the measure would have an impact, and consequently use different tools for each case.

22. However, despite this lack of built criteria to consider or establish when a subsidy or state aid is unjustified, Law 42-08 contemplates in its article 31 letter n) the *advocacy power* of the National Commission for the Defense of Competition during the process of formation of laws and other regulatory instruments or legislations, which may affect the conditions of market competition, the freedom of enterprise and the right to compete on equal terms. Because of this, PRO-COMPETENCIA issues "recommendation reports", which are addressed to the public authorities during the process of formation of rules, in order to prevent the adoption of regulations that may negatively impact free competition and the conditions of access to the market.

23. This advocacy intervention also applies to state aid and subsidies intended by the government, which means an "ex ante" evaluation of the proposals, which undoubtedly contributes to create criteria for the identification of state aid harmonized with the different sectors that are affected, making it more digestible on a case-by-case basis. Since it is not a subsidy or aid already established and that has caused damages or threats to competition and economic agents, allowing to maintain a dialogue between the parties and to establish criteria for future cases. The purpose of advocacy attribution is to prevent a negative impact on the conditions of competition in the market and the exercise of freedom of enterprise, in regards to regulation.

24. An example of the use of advocacy for the treatment of state aid and subsidies that we can cite as experience, is the Public report of recommendation on the Bill -which is already Law No. 6-22- that, provisionally, taxes with zero rate the current customs tariff to

certain goods that affect the cost of food that constitute a basic component for the feeding of the Dominican family", published by PRO-COMPETENCIA.

25. The objective of the referred Law No. 6-22, is to make a feasible implementation of a measure of economic nature, consisting in reducing the cost of food that constitutes a basic component for the feeding of the Dominican family. Such measure is based on a socioeconomic reason made to counteract the increase in inflation caused by the COVID-19 pandemic, and thus mitigate its impact on the most needy classes.

26. For the implementation of this measure, Law No. 6-22 in its Article 1, states<sup>18</sup> eliminating, for a period of six (6) months the customs tariff applicable to goods classified in the tariff subheadings at eight (8) digits of the Harmonized System established in the Tariff Reform and Fiscal Compensation Law. Thus, the foods indicated in the law are those of greater consumption in the family basket, such as: beef, pork, chicken meat, powdered milk, butter, garlic, peas, black beans, red beans, white beans, pinto beans, giros and jacmelos, other common beans, lentils, lima beans, peas, wheat flour, corn flour, refined soybean oil, refined peanut oil, refined sunflower oil, refined corn oils, animal fats and oils, vegetable fats and oils, margarine, pasta, bread and canned sweet corn<sup>19</sup>.

27. Despite PRO-COMPETENCIA not having clear guidelines on how to deal with this type of circumstances, we adhere to the guidelines of the European Union, which allow this kind of exceptions to competition, when faced with a scenario that responds to issues caused by natural disasters, as would be the COVID-19.

28. Evidently, it is clear that from the economic point of view, one of the possible interpretations would be the potential negative effect that could derive from taxing the customs tax applicable to the products with a zero rate, for a period of six (6) months, is that the elimination of such duty becomes a competitive advantage in favor of foreign companies. This is so because such companies would not have to pay the customs duty to introduce their products to the local market, while the local producers of such products would have to continue assuming the cost of the customs tax applicable to the importation of the inputs they need to produce the same type of product in the local market.

29. Another possible and not discardable interpretation is that because of the price increase basic food products basket consumed by the Dominican population of scarce resources, it was necessary for the State to intervene on a provisional basis through this type of subsidies and until a stabilization of prices in the world market takes place. This treatment by the State would be justified by virtue of the provisions of Article 221 of the Constitution which allows for special treatment when dealing with matters of national interest.

30. PRO-COMPETENCIA, as competition authority, has recognized that although such measure would be inappropriate in ordinary circumstances, and it must be considered reasonable in the current socioeconomic context, taking into account the unpredictable magnitude of the repercussions that the war conflict between Russia and Ukraine could have for the world economy. In these circumstances, *the right most akin to human dignity* whose protection should be prioritized is food security<sup>20</sup>, which requires guaranteeing the

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<sup>18</sup> Article 1 of Law No. 6-22: *"The goods classified in the tariff subheadings at eight (8) digits of the Harmonized System established in Annex I of Law No. 146-00 of December 27, 2000, which are detailed below, are provisionally taxed at zero (0) rate in the customs tariff, for a period of six (6) months, counted as of the entry into force of this law..."*

<sup>19</sup> This enumeration only indicates the main product and does not cover the different varieties of the same product provided for in Article 1 of the Draft.

<sup>20</sup> Article 54 of the Dominican Constitution.

population's access to basic necessities and applying palliatives to counteract the inflation that could hinder access to them.

31. Given the extraordinary nature of the events that are causing the rise in inflation, and particularly the increase in the prices of food and inputs for its production, the Government has the urgent responsibility to adopt measures to counteract this situation. Likewise, it is incumbent upon the public authorities to guarantee the population access to the products of the family basket in conditions that allow everyone to obtain them, especially the poorest<sup>21</sup>. Thus, in special moments such as the present, the competition authorities must operate as a kind of harmonizer between economic rights and the social purposes pursued by initiatives such as these that are implemented in a situation of socioeconomic crisis, as will be developed below.

32. Although it is necessary to make the analysis based on the context in which such extraordinary measures are developed. It is no less certain that the authorities should also focus on making the impact on competition by applying these measures less burdensome. At the time, PRO-COMPETENCIA made observations to the then bill that today is Law No. 6-22, to counteract certain points of discretion, among which are: to establish volume quotas of imports that will be allowed for each one of the products, in order to avoid that the effects of the measure proposed in the Bill be prolonged in time beyond the period of six (6) months, as well as to evaluate the impact of the Bill in the free trade agreements already subscribed by the Dominican Republic and that are currently in force, among other measures.

33. Other resources in the exercise of competition law that we have carried out, is the "ex post" analysis of subsidies and state aid, through impact studies, being able to highlight the recently published study "The impact of state aid from the perspective of competition: the case of the Border Development Law", which establishes a special tax regime for companies that settle on the border of the Dominican Republic and Haiti. This study analyzes to what extent the application of the Law has or has not generated favorable conditions for companies under the border regime, to the detriment of other companies with which they compete.

34. As a result of this study, PRO-COMPETENCIA has established the necessary criteria for the investigation of subsidies and state aid in the Dominican Republic, since, in order to carry out the study, a "Methodological Guide for the analysis of state aid from the perspective of the competitive impact" was designed, which will be used to evaluate the proposals for state aid and subsidies that the government intends to make, through public reports of recommendations.

35. The assessment is complex, since each case will have its own particularities, which will depend on the state aid and its impact on the markets. PRO-COMPETENCIA has developed an instrument that establishes the procedures that will allow the initiation of an economic investigation and review of State Aid, as described in the following section.

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<sup>21</sup> National Commission for the Defense of Competition of the Dominican Republic (2022). Report of recommendations on the "Bill that provisionally levies a zero rate on the current customs tariff on certain goods that affect the cost of food that constitute a basic component for the nutrition of the Dominican family.



### 3. Procedure for initiating an investigation to analyze the impact on competition of subsidies and state aid.

36. International experiences consider the following conditions as indicators to assess whether a government intervention causes unjustified market barriers or promotes unfair competition, such as:

- It is a transfer of state resources, under the modality of transfer, exemption or subsidy;
- One or more companies or economic entities are involved, regardless of their nature;
- It is selective in nature,
- There are indications that justify restrictions to competition in the sense of favoring a dominant position or greater market share in some of the economic agents.

37. Investigations are carried out *ex officio* or at the request of economic agents that could be affected, prioritizing sectors with high market concentration; companies with high market share or any dominance indicator; producers of important goods in the family basket or companies established in markets that are difficult to enter.

38. State aid cases may be *ex ante* or *ex post*. *Ex ante* cases are those cases that are not yet implemented, but are being evaluated or raised by government agencies. The purpose is to estimate the potential impact and make recommendations. *Ex post* cases are those cases in execution, and the objective is to know the verifiable impact of the intervention and provide recommendations.

#### 3.1. Preliminary inquiry

39. The purpose of the preliminary inquiry is to determine whether a case of state aid meets some of the requirements that presuppose a significant negative impact on the conditions of competition in a given market compared to the expected economic and social benefits. This stage is a qualitative and quantitative analysis with respect to relevant public and private actors; form of competition; degree of concentration; size of the market, measured through the amount of sales; level of incidence in the family basket, among other indicators. If the case meets the conditions to be investigated, the investigation is formalized.

#### 3.2. Stages for the Evaluation of Grants and State Aid

##### 3.2.1. Rationality analysis

40. Rationality analysis consists of analyzing state aid from the broadest possible point of view: economic, political, social, environmental and technological. Specifically, it is evaluated whether the state aid corrects a market failure, and what is its nature, or whether it aims at equity objectives. Likewise, the effectiveness of this type of incentives in previous applications, amount and time limit. Also, the relevance of the measure in light of economic theory and empirical experience, and its effects on competition.

##### 3.2.2. Social impact analysis

41. Social impact analysis aims to answer the question: What has been the change in the economic or social variables that the state aid was intended to modify? Analytical impact measurement techniques are used to answer this question. A widely used approach

is the counterfactual scenario. The counterfactual is expressed as "what would have been the outcome if a person had not participated in the program?"<sup>22</sup>. This corresponds to the outcome that would have been obtained if the state aid had not been carried out.

42. Statistical techniques such as propensity score matching, regression discontinuity regression, and regression analysis using instrumental variables<sup>23</sup> are also used. These techniques, due to their quasi-experimental nature, are more appropriate for measuring the effect of a public policy than other procedures.

### **3.2.3. Competitive impact analysis**

43. The purpose of the competitive impact analysis is to estimate whether the State Aid under study has distorted or could significantly distort market competition. That is, the creation of a dominant position, and its possible abuse, or any obstacle to free competition described in the General Antitrust Law. The precise definition of the relevant market is the first step to evaluate changes in its structure and organization. This involves delimiting the products involved or potentially affected by the change of conduct of the aid beneficiary, and delimiting the consumers according to products and geographic areas.

### **3.2.4. Balance sheet analysis**

44. The balance sheet analysis compares the benefits in terms of their economic and social consequences with the costs of state aid in terms of government spending, market distortion or welfare loss, if any, resulting in the net social impact. The application of this test in Europe is based on principles of the European Commission<sup>24</sup>. First, consider the objectives set in terms of efficiency and equity; then examine whether the aid design is proportional and promotes economic efficiency, rather than being a simple unconditional transfer; and finally, estimate the impacts on competition.

### **3.2.5. Decision**

45. The decision must conclude whether or not the State Aid distorts competition. If there is a distortion it will be necessary to distinguish whether the social benefits compensate or do not compensate the cost of the distortion. In these cases the conclusions should include the agreed recommendations, depending on the type of State Aid.

46. In summary, the strategy described above represents a reference framework for the evaluation of state aid that the institution has designed based on its own experience and international case studies. There is no general methodology for dealing with these incentives. However, there are a variety of methods and practices for impact evaluation that allow us to understand the effectiveness of certain public policies, as in the case of the Dominican Republic's Border Development Law, which we have analyzed with the criteria already expressed.

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<sup>22</sup> Gertler, Paul J (2007). Impact evaluation in practice. Second edition. World Bank and Inter-American Development Bank (IDB).

<sup>23</sup> Khandker, Shahidur R (2010). Handbook on impact evaluation: quantitative methods and practices, World Bank; Washington, DC.

<sup>24</sup> European Commission (2012). Common Principles for an Economic Assessment of the Compatibility of State Aid under Article 87.3.

## 4. Conclusions

47. While it is true that state aid is a clear example of a conflict of interest between competition policy and social policy, since competition policy would understand that the disappearance of a company responds to a natural question of the market, in view of the fact that it could not compete and continue to operate effectively. While the view from the State's social policy emphasizes that the administration should intervene to save those companies that are affected, mainly in times of crisis, and thus avoid job losses and protect the business sector<sup>25</sup>.

48. In these analyses it is necessary to adopt a middle ground, since both actions: the disappearance of a company or the granting of aid, can have a negative impact on competition policy. The disappearance of an important economic agent in the market may lead to greater concentration, reduction of supply, possible price increases and job losses. Meanwhile, subsidies and state aid put some competitors at a disadvantage over others. Therefore, it will be necessary to harmonize economic and social goals, prioritizing the general interest, especially in times of crisis, which is when these issues arise most frequently.

49. Determining the criteria for assessing and studying the impact of state aid and subsidies on competition and their use in times of crisis is one of the challenges faced by competition authorities. In this regard, the United Nations Conference on Trade and Development (UNCTAD) has argued that what is important is that the aid meets several conditions so that any negative effects on competition are outweighed by the positive effects of such aid on the selected general interest objectives<sup>26</sup>.

50. The European experience, after the COVID-19 pandemic, showed us that it is essential to "select the sectors, the type and size of the company and the investments to be financed with public funds to ensure that the recovery is sustainable and inclusive"<sup>27</sup>. In this way, aid can also be used to incentivize changes in the mode of production or other issues affecting the market; for example, in the European case, indicators were adopted to grant aid to companies that invest in digitization and ecological transition.

51. In conclusion, subsidies and state aid should be viewed in an average context, provided that they are implemented with the necessary controls and objectives so as not to pose a direct threat to competition policy, and that they can harmonize conflicting interests, achieving the best results for the general welfare.

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<sup>25</sup> Uría Fernández, Francisco (2010). Recapitalization aid and acquisition of depreciated assets in the financial sector. In *Derecho de la Competencia en Tiempos de Crisis*. Law Collection; Spain; pp. 320-325.

<sup>26</sup>United Nations Conference on Trade and Development (2021). Competition advocacy in the course of and after the COVID-19 crisis. Available at: [https://unctad.org/system/files/official-document/ciclpd58\\_es.pdf](https://unctad.org/system/files/official-document/ciclpd58_es.pdf)

<sup>27</sup> Ibid.