

Unclassified

English - Or. English

19 November 2025

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

**Global Forum on Competition**

**Competition Law Enforcement in Informal Markets – Contribution from Dominican Republic**

- Session III -

2 December 2025

This contribution is submitted by Dominican Republic under Session III of the Global Forum on Competition to be held to be held on 1-2 December 2025.

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

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**JT03577081**

*Competition Law Enforcement in Informal Markets*

*Informality and Competition Defense in the Dominican Republic: Specific Cases and Institutional Challenges*

*- Contribution from Dominican Republic -*

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## 1. Introduction

1. The informal economy dominates more than half of the Dominican Republic's productive fabric. According to data from the Central Bank of the Dominican Republic, nearly 54% of total employment corresponds to informal activities.<sup>1</sup>
2. This reality not only poses a challenge for the country's fiscal and labor policies, but also represents one of the main structural obstacles to the effective application of General Competition Law No. 42-08. Informality limits the traceability of economic transactions, weakens market institutions, and generates profound asymmetries that prevent both the detection and punishment of anti-competitive practices.
3. In this context, informality transcends its traditional dimension as a tax or employment problem to become a fundamental barrier to the defense of competition. Its massive presence distorts economic rivalry, reduces aggregate productivity, erodes incentives for innovation, and perpetuates conditions of unfair competition that harm both consumers and formal economic agents.
4. This contribution examines this issue from an institutional and practical perspective, analyzing specific cases in which informality has hindered the work of the National Commission for the Defense of Competition (PROCOMPETENCIA), assessing its systemic and economic impacts, and proposing lines of action to strengthen the Dominican State's capacity to promote competitive, transparent, and equitable.

## 2. Informality as a structural obstacle to competition

5. The coexistence of formal companies and informal operators in the same market generates fundamentally asymmetrical competition. This asymmetry is not based on differences in efficiency, innovation, or product quality, but rather on the differentiated compliance with legal, fiscal, and regulatory obligations that the State imposes on economic agents.
6. Informal operators systematically reduce their costs and, consequently, their sales prices by evading taxes, failing to comply with health or quality standards, and completely lacking verifiable accounting records. This artificial reduction in costs does not reflect legitimate competitive advantages, but rather the failure to comply with obligations that formal competitors do assume. The result is a severe distortion of competitive conditions in the market, a phenomenon widely documented in the economic literature on developing markets.<sup>2</sup>
7. For their part, formal companies bear regulatory and fiscal burdens that, although justified from the point of view of the public interest, place them at a structural competitive disadvantage vis-à-vis competitors who do not assume them. This disadvantage discourages productive investment, reduces the entry of new formal players into the market, and may even drive the “informalization” of companies that originally operated within the

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<sup>1</sup> Central Bank of the Dominican Republic. (2024). Continuous National Labor Force Survey. Santo Domingo.

<sup>2</sup> De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books; Perry, G. E., et al. (2007). *Informality: Exit and Exclusion*. Washington, DC: World Bank.

legal framework, as documented by the International Labor Organization in various studies on Latin American economies.<sup>3</sup>

8. From a market analysis perspective, the exclusion of the informal component in studies of competitive conditions leads to significant analytical errors. The competition authority may overestimate the market power of formal agents by not considering the competitive pressure exerted by informal operators, or underestimate the actual level of effective competition in segments where informality is predominant. These errors of judgment can lead to inappropriate regulatory decisions or the practical impossibility of applying effective remedies, as noted by the International Competition Network.<sup>4</sup>

9. The result of this situation is a vicious circle that perpetuates both informality and institutional weakness. Informality weakens the capacity for effective enforcement of competition law by making it impossible to collect information, precisely define markets, and identify relevant economic agents. Weak enforcement of the law, in turn, reduces incentives for formalization by failing to effectively sanction the illegitimate competitive advantages obtained by informal operators. Both phenomena feed into each other and progressively erode confidence in the economic system and the institutions that regulate it.

### 3. Specific cases: informality as a barrier to the enforcement of Law 42-08

10. The magnitude of the challenge that informality poses to the defense of competition is not merely theoretical. Between 2018 and 2023, the Executive Directorate of PROCOMPETENCIA was forced to close or suspend seventeen investigations due to a lack of verifiable information, the prevailing informality in the markets under investigation, or the refusal of agents to cooperate with the investigation proceedings. This fact alone reveals a serious institutional limitation: almost a fifth of the investigations initiated during that period could not be completed, not because of the absence of infringements, but because of the material impossibility of investigating markets where a large part of the actors lack formal existence.

11. The files and resolutions issued by the Executive Directorate reveal how informality permeates virtually all sectors of the Dominican economy, from basic mass consumption services to sectors that are highly regulated for public health reasons. The cases described below illustrate in concrete terms the different ways in which informality hinders the effective application of competition policy, affecting both PROCOMPETENCIA's investigative capacity and the effective protection of consumers and competitors operating legally.

#### 3.1. Purified water market (Resolution DE-017-2019)

12. In an investigation into the bottled purified water market, the Executive Directorate found that more than 60% of this market operates informally, with clandestine purification plants that do not have health registration or operating licenses granted by the competent

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<sup>3</sup> International Labor Organization. (2018). *Women and Men in the Informal Economy: A Statistical Picture*. Third Edition. Geneva: ILO.

<sup>4</sup> International Competition Network. (2020). *Competition Enforcement and Consumer Welfare: Setting the Agenda*. Report of the ICN Advocacy Working Group.

authorities<sup>5</sup>. This finding was not based on indirect estimates, but on fieldwork and cross-checking of information with the Ministry of Public Health, which revealed a massive gap between the volume of purified water consumed in the country and the officially registered production capacity.

13. This situation made it impossible for the Executive Directorate to carry out fundamental market analysis tasks that are at the core of any serious investigation into competitive conditions. It was impossible to precisely define the relevant market, since defining competitive boundaries requires identifying who is actually competing for the same consumers, information that cannot be obtained when most competitors are invisible to the State. Quantifying the degree of concentration using standard indices such as the Herfindahl-Hirschman Index was equally impractical, as these instruments presuppose knowledge of the market shares of all relevant participants. The correct identification of the economic agents with the largest effective market share was frustrated by an obvious reality: most of the operators lacked verifiable legal existence, which prevented their formal notification, the request for information through official requirements, or the eventual imposition of sanctions in the event of detected infringements.

14. As a result, the investigation had to be closed without it being possible to determine whether or not there were anti-competitive practices such as price-fixing agreements, market sharing, or abuse of a dominant position. The paradox is clear: in a market where widespread informality is, in itself, a fundamental distortion of competitive conditions that systematically benefits those who evade their legal obligations over those who comply with them, the Executive Directorate was prevented from acting precisely because of the magnitude of the phenomenon it was investigating.

### **3.2. Automotive and retail sector (Resolutions DE-016-2019 and DE-053-2018)**

15. In the vehicle and automotive parts sales sector, the Executive Directorate verified that six commercial companies investigated for alleged unfair competition were not registered in the Commercial Registry and did not have a locatable physical address. Attempts to serve formal notice were unsuccessful: the addresses provided in the complaints corresponded to closed commercial premises, spaces occupied by other businesses, or simply vacant lots. The investigation was completely frustrated by the impossibility of identifying legal representatives, requesting accounting information, or accessing transaction records.

16. This situation illustrates an additional dimension of the problem that goes beyond mere investigative difficulty: informality not only hinders the investigation of anti-competitive conduct, but also makes it materially impossible to apply sanctions even when there is sufficient evidence of violations of competition law. The complainants in these cases, formally constituted companies that competed with these informal agents, provided evidence of unfair commercial practices, including misleading advertising about the origin of spare parts, the sale of products without warranty, and artificially low prices based on tax and regulatory evasion. However, the lack of legal personality of the defendants rendered this evidence irrelevant from a procedural point of view: there is no legal mechanism that allows for the administrative sanctioning of those who do not have formal existence before the State.

17. Informal agents operate, *de facto*, in a space of institutional impunity that systematically places them beyond the reach of administrative authority. This impunity is

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<sup>5</sup> PROCOMPETENCIA. (2019). Resolution DE-017-2019. Santo Domingo: National Commission for the Defense of Competition.

not the result of accidental legal loopholes, but rather the logical consequence of an enforcement system designed to regulate formally constituted legal entities. The practical result is that those who most violate competition rules through their own informality are precisely those who are least likely to be reached by the sanctions provided for by law.

### 3.3. Pharmaceutical market (Resolution DE-013-2022)

18. The corresponding file showed that a pharmacy under investigation was operating without legal authorization or health registration with the Ministry of Public Health<sup>6</sup>. This situation not only represented a serious administrative violation from a health standpoint, but also created conditions of unfair competition for pharmaceutical establishments that do comply with legal operating requirements.

19. The case highlights how informality in sectors regulated for public health reasons creates risks for both consumers and fair competition in the market, an issue that has been pointed out by the World Health Organization in its studies on counterfeit medicines and unauthorized establishments.<sup>7</sup>

### 3.4. Production and marketing of eggs (Resolution DE-044-2019)

20. In the poultry sector, specifically in the production and marketing of eggs, the Executive Directorate verified the existence of a high level of informality throughout the production and distribution chain.<sup>8</sup> The investigation was initiated in response to complaints about alleged price-fixing agreements between producers and distributors, conduct that constitutes one of the most serious violations of competition law. However, the proceedings revealed that a large number of medium-sized producers operated without health registrations with the competent authorities, marketed their products without any traceability, and conducted their commercial operations exclusively in cash, without generating verifiable accounting documentation.

21. In addition, the investigation found that the main association in the sector, which supposedly represented producers and had been identified as the institutional space where the alleged anti-competitive agreements had been coordinated, was not legally registered as a non-profit organization with the Attorney General's Office. This situation raised fundamental doubts about the representativeness and legitimacy of the sectoral organizations that interacted with public authorities and that, in principle, should serve as interlocutors for the sector in spaces for dialogue on public policy.

22. The widespread lack of formalization prevented the Executive Directorate from accurately determining the competitive structure of the market. It was not possible to establish how many producers were actually operating in the market, what their production volumes were, or what market share each one held. It was impossible to calculate the marketing margins at each link in the distribution chain, which is essential information for assessing whether margin squeezing or price discrimination practices existed. Finally, the Executive Directorate was unable to determine whether or not there were agreements restricting competition among distributors, since the absence of accounting records made it

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<sup>6</sup> PROCOMPETENCIA. (2022). Resolution DE-013-2022. Santo Domingo: National Commission for the Defense of Competition.

<sup>7</sup> World Health Organization. (2017). WHO Global Surveillance and Monitoring System for substandard and falsified medical products. Geneva: WHO.

<sup>8</sup> PROCOMPETENCIA. (2019). Resolution DE-044-2019. Santo Domingo: National Commission for the Defense of Competition.

impossible to verify whether the prices observed in the market were the result of independent decisions by each agent or collusive coordination. The investigation had to be closed not because of a lack of evidence, but because of the impossibility of proving anything due to the widespread informality of the sector.

### 3.5. Health services (Resolutions DE-021-2019 and DE-054-2018)

23. Investigations in the health sector identified the existence of medical professionals who were not formally affiliated with the service provider networks of the Health Risk Administrators (ARS), but who were presented as part of those networks to members.

24. This practice generated unfair competitive advantages for certain ARSs that artificially expanded their provider networks without assuming the corresponding costs and obligations. Additionally, it created confusion among consumers regarding the actual coverage offered by health plans, affecting their ability to make informed decisions.

25. These cases demonstrate that informality not only hinders the investigation and punishment of anti-competitive practices, but also creates systematic opportunities for unfair competition in which offenders benefit financially from regulatory non-compliance, while consumers bear additional risks and lower quality in the goods and services they purchase.

## 4. Impacts of informality on institutions and economic development

26. The effects of informality on competition policy transcend individual cases to affect the country's economic institutions in multiple dimensions.

27. First, informality makes it materially impossible to apply standard technical tools for competition analysis. When more than 54% of economic agents operate outside the formal system, it is impossible to accurately calculate concentration indices such as the Herfindahl-Hirschman Index, the main instrument for measuring market power in merger and acquisition assessments. According to UNCTAD, developing economies face particular vulnerability to anti-competitive practices precisely because their business infrastructures are weak and their enforcement agencies lack the capacity to effectively detect and address many instances of anti-competitive behavior, a situación that is exacerbated when a large proportion of the relevante actors operate in the shadows.<sup>9</sup>

28. Estimating demand elasticities, marketing margins, or consumer harm resulting from anti-competitive practices requires accounting data, transaction records, and financial statements that informal operators do not generate and are not required to provide. This shortcoming is not simply a methodological inconvenience, but a practical impossibility that renders the investigative function of the competition authority meaningless.

29. Second, the erosion of the competition advocacy function. Informality drastically reduces the effectiveness of PROCOMPETENCIA's advocacy function vis-à-vis other State entities. The OECD has established that the effectiveness of competition advocacy depends critically on the availability of reliable data on the structure and functioning of markets. When PROCOMPETENCIA evaluates bills, regulations, or public policies that may affect competition in sectors where informality predominates, its recommendations lack the empirical support necessary to persuade decision-makers. For example, when

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<sup>9</sup> UNCTAD. (2021). Competition Policy and the Informal Economy. Geneva: United Nations Conference on Trade and Development.

analyzing regulatory proposals for the passenger transport or retail sectors, the absence of quantitative information on the informal component makes it impossible to demonstrate with concrete evidence what the real impact of the proposed measures would be on effective competition in those markets.<sup>10</sup> Advocacy for competition requires not only solid theoretical arguments, but also empirical data that allows the economic effects of regulations to be quantified. Without this empirical basis, PROCOMPETENCIA's recommendations are perceived as technical opinions without sufficient support, significantly reducing their influence on public policy design processes.

30. Third, informality fragments the inter-institutional coordination that is essential for effective competition policy. Data on economic agents is scattered among multiple Dominican government entities: the General Directorate of Internal Taxes (DGII) has partial information on registered taxpayers but not on tax evaders; the General Directorate of Customs (DGA) records formal imports but not contraband; the General Directorate of Public Procurement (DGCP) knows which suppliers participate in tenders but not those that operate in parallel markets; the National Statistics Office (ONE) makes estimates about the informal economy but lacks granular information by sector; various sectoral ministries (Public Health, Agriculture, Industry, and Commerce) maintain records of authorized establishments but are unaware of the magnitude of clandestine operations in their respective areas. The absence of formal information-sharing protocols, combined with the lack of integrated data systems, hinders the work of all these institutions. For PROCOMPETENCIA, this fragmentation means that even when it seeks to coordinate efforts to better understand a market, the data it manages to gather is incomplete, inconsistent across sources, and often outdated. The result is a fragmented view of economic reality that prevents the formulation of competition policies based on robust evidence.

31. Finally, informality generates macroeconomic asymmetries that affect the efficient allocation of resources throughout the economy. The IMF has documented that informal economies are generally associated with low productivity, poverty, high unemployment, and slower economic growth<sup>11</sup>. When more than half of economic activity operates in informality, the measurement of sectoral productivity is fundamentally distorted. Official statistics on employment, investment, production, and economic growth are incomplete and only partially reflect the country's productive reality. IMF research on 158 countries during the period 1991-2015 reveals that the average size of the informal economy reaches 31.9% of GDP, with the most extreme cases exceeding 60%, and that this phenomenon is directly associated with lower levels of human capital accumulation, reduced innovation, and stagnant productivity<sup>12</sup>. In the case of the Dominican Republic, where informality exceeds 54% of employment, economic policy decisions are inevitably made on the basis of statistical information that does not reflect the full reality of the markets. This situation affects not only competition policy, but also the formulation of fiscal, labor, trade, and productive development policies. The World Bank and the IMF agree that massive informality keeps businesses small, with low productivity and limited access to financing,

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<sup>10</sup> OECD. (2019). *Competition Assessment Toolkit: Volume I. Principles*. Paris: OECD Publishing.

<sup>11</sup> IMF. (2020). *What is the Informal Economy?* Finance & Development. The study notes that "the informal economy is generally associated with low productivity, poverty, high unemployment, and slower economic growth" and that "informal enterprises do not contribute to the tax base and tend to remain small, with low productivity and limited access to finance. As a result, economic growth in regions or countries with large informal sectors remains below potential.

<sup>12</sup> Medina, L., and Schneider, F. (2018). *Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?* IMF Working Paper No. 18/17. Washington, DC: International Monetary Fund.

resulting in economic growth in regions or countries with large informal sectors remaining below their potential.<sup>13</sup>

32. The four impacts described above reinforce each other, creating a vicious circle that progressively erodes institutional effectiveness. Weak investigative capacity reduces the ability to impose sanctions, which in turn reduces incentives for formalization. The erosion of advocacy weakens the ability to promote reforms that facilitate formalization. Inter-institutional fragmentation prevents the development of coordinated strategies to address the problem. Macroeconomic distortions perpetuate structural conditions that favor remaining in the informal sector. This vicious circle is not limited to the area of competition, but affects the overall institutional quality of the country and its ability to achieve higher levels of economic development.

33. In short, informality is not simply a technical or administrative challenge for PROCOMPETENCIA. It is a structural obstacle that systematically erodes the scope and effectiveness of competition policy, hindering the construction of transparent, equitable, and sustainable markets, which are a fundamental requirement for the sustainable economic development of the Dominican Republic.

## 5. Institutional and methodological recommendations

34. Overcoming the structural barrier that informality represents for the defense of competition requires a comprehensive approach that combines institutional strengthening, methodological innovation, and interagency coordination. The following priority lines of action are proposed.

### 5.1. Institutional strengthening and interagency coordination

35. At PROCOMPETENCIA, we are developing the idea of presenting to the institutions involved in this issue the creation of a Competition and Informality Observatory, which would allow for the consolidation of scattered information on informal economic activity and its effects on competition. This observatory should operate with formalized data exchange protocols that guarantee both the confidentiality of the information and its traceability and appropriate use.

36. The bill amending the General Competition Law includes a fundamental innovation: the incorporation of sanctions for individuals who participate in anti-competitive practices. This reform will allow PROCOMPETENCIA to sanction infringing conduct by those operating informally, partially overcoming the current limitation that restricts sanctions to formally constituted legal entities.

37. Additionally, it is essential to promote regulatory reforms that reduce the costs of formalization and eliminate regulatory duplication that currently discourages entry into the formal sector. Simplifying procedures, reducing unnecessary requirements, and unifying registration offices can significantly contribute to expanding the base of formal economic agents.

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<sup>13</sup> Singh, A., Jain-Chandra, S., and Mohommad, A. (2012). Out of the Shadows. Finance & Development, Vol. 49, No.

2. IMF.

## 5.2. Culture of competition and economic education

38. Effectively combating informality as an obstacle to competition requires a profound cultural change. We are therefore planning campaigns specifically targeting micro, small, and medium- sized enterprises, in collaboration with chambers of commerce, business associations, and universities, that link formalization with concrete and tangible benefits: easier access to formal credit, legal certainty in transactions, strengthening of commercial reputation, and participation in institutional markets.

39. Similarly, it is essential to strengthen the training of judges, prosecutors, local authorities, and public officials in general in the areas of competition law, economic formalization, and their interrelationships. The judicial system must understand the importance of competition as a protected legal right and the need to effectively sanction practices that distort it, including those that take advantage of informality.

## 5.3. Strengthening investigative powers

40. In the virtual reform of the law, we have expanded PROCOMPETENCIA's investigative powers, allowing it to conduct unannounced inspections in justified cases, access banking and tax information when there are reasonable grounds for suspecting anti-competitive practices, and formally collaborate with authorities in other countries in investigations involving cross-border markets where informality plays a significant role.

## 6. Conclusions

41. Informality is a critical and still not fully addressed frontier for the defense of competition in the Dominican Republic. Its magnitude, which encompasses more than half of the country's economic activity, not only affects the legitimacy and institutional effectiveness of PROCOMPETENCIA, but also substantially limits the scope of investigations, reduces the State's ability to sanction anti- competitive practices, and erodes the confidence of formal economic agents in the fairness of the market system.

42. The cases analyzed in this article, ranging from the production and sale of purified water to unregulated medical services, including the automotive trade, the pharmaceutical sector, and the production of basic foods, reveal that informality is not simply a statistical phenomenon or an abstract analytical category. On the contrary, it is a concrete structural distortion that directly and daily impacts the effectiveness of Law 42-08 and the Dominican State's ability to guarantee fair, transparent, and competitive markets.

43. The vicious circle between informality and weak enforcement of competition law can only be broken through a coordinated, sustained, and multidimensional effort involving all relevant public institutions, the organized private sector, and academia. This effort must be simultaneously oriented toward strengthening economic information systems, actively promoting formalization through positive incentives and reducing unnecessary regulatory barriers, and consolidating a widespread culture of regulatory compliance and fair competition.

44. The ongoing legal reform, which will incorporate the possibility of sanctioning individuals who participate in anti-competitive practices, represents an important step in the right direction. However, its success will depend on it being complemented by the other measures proposed in this analysis: the Competition and Informality Observatory, methodological innovation in market studies, strengthening inter-institutional

coordination, expanding investigative powers, and systematically promoting a culture of competition.

45. Only through this comprehensive approach can competition policy become a real and effective tool for promoting productivity, innovation, equity, and economic well-being in the Dominican Republic. The progressive formalization of the economy and the strengthening of competition institutions are not alternative objectives, but two sides of the same coin: the construction of a modern, transparent economic system geared toward benefiting all Dominican citizens.

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