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- Contribution from Dominican Republic -

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Session I – Competition and Poverty

The impact of free competition in the fight against poverty in the Dominican Republic

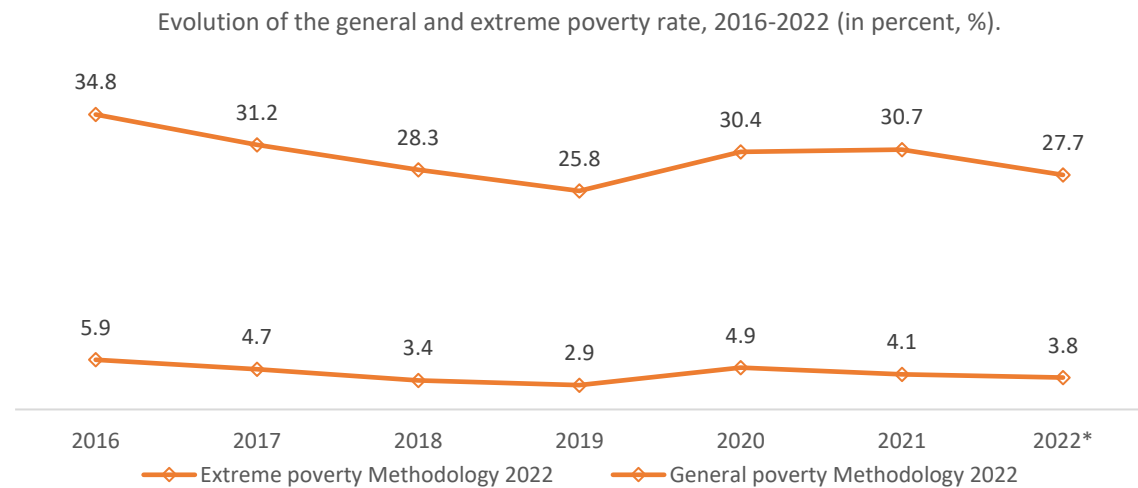
- Contribution from Dominican Republic* –

1. The problem of Poverty in the Dominican Republic

1. Poverty is a social phenomenon from which no nation in the world can escape. There are countless actions and policies from governments to prevent, mitigate and eradicate it. It is a political, legal and even moral duty of the States to fight it. It is a matter that concerns the minimum human dignity that every human being deserves.

2. In the Dominican Republic, the issue of poverty concerns the government. It should be noted in this regard, that the country has experienced significant economic and social progress in recent years. Economic growth during the 2016-2022 period was 4.37%, and per capita income increased from \$ 7,521 dollars to \$ 10,581 dollars. This growth has led to a reduction in poverty and inequality. “Overall poverty” was reduced during this period from 34.8% to 27.7%, in similar matters as “extreme poverty”, which decreased from 5.9% to 3.8%. Also, inequality levels which were measured using the Palma Index¹, decreased from 2.21 to 1.71. The latter can be seen in more detail in the following graph.

Figure 1. Evolution of the general and extreme poverty rate, 2016-2022



Source: Interinstitutional Technical Committee on Poverty Measurement, based on ENCF microdata processing.

* This document was written by María Elena Vásquez Taveras.

¹ The Palm Index is the ratio of the total income of the richest 10 percent of the population to the total income of the poorest 40 percent of the population.

3. This reduction in poverty is associated with an improvement in unemployment and labor force underutilization indicators². Open unemployment, underemployment and potential labor force decreased from 19.2% in 2016 to 13.8% in 2022, and the formally employed increased from 42.06% in 2016 to 43.80% in 2022.

4. Another factor associated with the reduction of poverty is the social protection programs to combat poverty. In 2012, the *Progresando con Solidaridad* (PROSOLI), program was launched where a poor and vulnerable family received a monthly transfer of 40% of its income, while a non-poor but vulnerable family received less than 7% of its income. "Eating is First," one of the Program's conditional transfer components, benefited 825,275 people in 2019, reaching an expenditure of 8,311.21 million dominican pesos (Ñopo and Barinas 2021).

5. The Programa Mundial de Alimentos (PAE) was also implemented to ensure food and nutritional care for students in the educational system, which is an important component in the Basic Food Basket of many families. The PAE benefited 1,794,630 people in 2021. The country's levels of undernourishment have decreased by going from a prevalence of 27.1% in 2000-2002 to 9.5% in 2016-2018 (FAO, PAHO, WFP and UNICEF 2019).

6. In addition, it is necessary to highlight important changes in the poverty measurement instruments. The Ministry of Economy, Planning and Development (MEPyD) implemented a new methodology to measure poverty as of the year 2022, updating the poverty lines with respect to the previous methodology of 2012. Specifically, the new methodology uses the 2018 consumption pattern; includes the School Feeding Program (PAE) in the aggregate income; eliminates the item of gifts from abroad; and calculates poverty lines by macro-regions³.

7. The pending economic and social challenge is to increase productive linkages and reduce informality in order to create jobs with higher added value. As studies show⁴, 56.20% of the Dominican economy is informal (2022), and 51% of those employed are self-employed or do independent work.

8. Ana María Fernández and María Alejandra Majluta (2020)⁵ in a study on the relationship between the quality of salaried work and poverty concluded that workers who have greater social protection (they have health and life insurance, pension plans) are less likely to be poor than those who have less social protection. This implies that reducing poverty levels requires not only fostering economic growth but also decreasing informality in the economy.

9. For Ñopo and Barinas (2021) informality and poverty are two different phenomena since "many informal workers earn more than many formal workers, and there are formal workers in all income deciles".

10. In summary, the Dominican Republic has demonstrated commendable economic performance and macroeconomic stability, while also implementing impactful social programs that have effectively reduced poverty, undernourishment, and inequality. Major

² Ministry of Economy, Planning and Development (MEPyD). Boletín de Estadísticas Oficiales de Pobreza Monetaria 2022, p. 17.

³ Ibidem

⁴ Citar fuente

⁵ Quienes son? Si se están usando para citar sugiero indicar la relevancia de las mismas.

structural challenges remain, such as generating greater productive linkages to reduce the levels of informality in the economy and the creation of jobs with higher value added.

11. These have been direct factors that have contributed to the relentless struggle to reduce and eradicate poverty levels in the country. However, there are other indirect or conditioning factors that also have an impact on the task of the eradication of poverty. Such is the case of good competition policies that contribute to generate greater economic growth, business innovation, increased sources of employment, products and services at more affordable and economic prices for the consumer that, in the end, contribute to reduce poverty levels in the country.

1.1. The philosophy of the "Fair Trade" of the United Nations: commitment of the States.

12. The philosophy of fair trade is an initiative promoted since the 1960s by several NGOs of worldwide incidence and assumed by the United Nations Organization (UNO), as a proposal that seeks to create a model of innovative commercial activity oriented to the achievement of sustainable development and sustainable supply, as well as a general overall development, with economic, social and environmental sustainability, respecting the idiosyncrasy of the peoples, their cultures, traditions and basic human rights; a set of factors that evidently contribute to eradicate poverty.

13. The United Nations Conference on Trade and Development (UNCTAD), currently composed of 195 countries, is aimed at supporting developing countries in their process of incorporation into the globalized economy with the intention of lifting millions of people out of poverty. The first United Nations Conference on Trade and Development met in Geneva in 1964.

14. This philosophy of fair trade is a cross-cutting theme in important UNCTAD documents, such as its famous "Model Law on the Defense of Competition"⁶, a document that is not legally binding, based on soft law, and was drawn up as a result of the reports that States have been submitting on the application of their respective competition laws.

15. The philosophy of Fair Trade is based on ten essential principles, in principle three of which, related to "fair trade practices", emphasizes the prohibition of unfair competition. In other words, this world vision of fair trade rules underlies the idea that a market where unfair competition is prohibited and sanctioned is likely to generate conditions conducive to reducing poverty levels.

16. Ensuring fairness in competition is a fundamental goal of competition policies worldwide. Therefore, a robust and strong competition policy that safeguards against unfair practices is crucial for promoting fair trade and indirectly contributes to the ongoing fight against poverty.

⁶ Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, held in Geneva, Switzerland from October 19 to 23, 2020.

1.2. The triple dimension of Free Competition in the Dominican Constitution.

17. Free competition has a triple dimension in the Dominican Constitution: it is a right, a guiding principle and an obligation of the State. As a right, the Constitution assumes it as a "right-guarantee" related to the fundamental right to free enterprise enshrined in Article 50 of our Law of Laws, since free and fair competition is one of the freedoms of commerce that every State must guarantee. It is one of the basic rules of the capitalist economy.

18. In that order, another of the constitutional dimensions of free competition is the one related to its condition of guiding principle of the Dominican economic regime, enshrined in Article 217 of the Constitution. It should be noted at this point that free competition is a concept of economic science that was extrapolated to Law. Indeed, as well pointed out by Sebastián Barreto (2017), free competition is an economic principle based on the famous economic law of supply and demand as factors that are to regulate the market by themselves. Freedom of competition prevails when the equilibrium in the market is determined by the collective interaction of private initiatives and key economic indicators.

19. The third constitutional dimension of free Competition is its condition of state obligation to guarantee. In this sense, Article 50.1 of the Constitution states that: *"The State favors and watches over free and fair competition and will adopt the necessary measures to avoid the harmful and restrictive effects of monopoly and abuse of dominant position, establishing by law exceptions for cases of national security"*.

20. Because of this constitutional obligation, the State must favor and watch over *"free and fair competition"* and, in addition, adopt the *"necessary measures"* to avoid a series of anti-competitive conducts and practices indicated in the Constitution.

21. When it comes to state obligations to guarantee rights, as in this case, the State must implement a whole structure of institutions and public measures that facilitate the exercise of the right or its protection from acts that affect its essential content. In this sense, Héctor Gros Espiell (1991) establishes that: *"the obligation to guarantee implies the duty of the States to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are capable of legally ensuring the free and full exercise of rights..."*

22. In addition to legislation that regulates and protects free competition, the Dominican State also has a government agency with levels of autonomy that serves as the governing body of free competition. This agency is the National Commission for the Defense of Competition (PRO-COMPETENCIAPRO-COMPETENCIA), created and regulated by Law No. 42-08 of 2008, equivalent to a competition authority in countries that count with an institution with this figure.

23. It should be noted that although PRO-COMPETENCIAPRO-COMPETENCIA is the specialized agency of the Dominican State responsible for the defense of competition, there are other governmental market governing institutions that also have certain powers to regulate free competition in the markets subject to regulation.

24. Law No. 42-08 itself is in charge of regulating this interrelation between PRO-COMPETENCIAPRO-COMPETENCIA and other government agencies responsible for regulating sectorized markets and with competition defense powers. In fact, Article 2 of the referred law establishes a fundamental principle in this matter: the Principle of Unity of Regulation. By means of this principle, all economic agents whose activity is not regulated by a sectorial law will be subject to the free competition regulations established by Law No. 42-08. On the other hand, to those agents that are subject to a sectorial law, Law No. 42-08 is only applicable in a supplementary manner, if the already existent

sectorial law does not contain any provision that regulates free competition in their market, or refers to any competition matters at all.

25. In addition, Article 20 of Law No. 42-08, states that the market regulatory bodies whose sectorial law grants them powers to adopt defense measures or competition policies in their market, must send the draft of the act or resolution to PRO-COMPETENCIA for its review, together with the documentation that supports it, before approving administrative acts intended to issue regulations or to resolve administrative sanctioning processes that may cause any affect in this matter.

1.3. Free Competition as a guiding principle of the Dominican economy

26. We have highlighted in the previous section, the condition of free competition as a guiding principle within the Dominican economy, in accordance with the mandate of Article 217 of the Dominican Constitution. Indeed, this article states: *"The economic system is oriented towards the pursuit of human development. It is based on economic growth, redistribution of wealth, social justice, equity, social and territorial cohesion and environmental sustainability, within a framework of free competition, equal opportunities, social responsibility, participation and solidarity."*

27. Given the previously stated facts, the Dominican economic regime *"is oriented towards the search for human development"*. This last concept of *"human development"* implies that the State should take governmental actions and design public policies aimed at improving the living conditions of its citizens through an increase in the goods with which it can cover their basic and complementary needs, as well as the creation of a social environment in which the human rights of all citizens are respected.

28. This dynamic of the State leads us to recognize that the *"search for human development"* implies creating a series of conditions that undoubtedly contribute to eradicating poverty. In this context, if the economic regime embraces free competition as one of its foundational pillars or guiding principles, there is no doubt that it becomes a contributing factor to achieving human development and, consequently, eradicating poverty.

1.4. The relationship between competition policy and poverty.

29. The relationship between competition and welfare⁷ has been widely studied in the economic literature, more so than in the legal literature. Competitive markets generate a lower level of production and prices compared to a market where there are firms holding a dominant market position. A study by the McKinsey Global Institute found that countries with high levels of competition had higher export competitiveness, better innovation and higher economic growth. Economic growth depends on productivity, which depends on free competition.

30. The relationship between trade liberalization and poverty has also been studied. From an economic theory perspective, it is assumed that trade liberalization has a positive impact on poverty in the long run. Trade affects the income of the poor through economic growth, macroeconomic stability and public revenue. The impact on poverty reduction depends on many factors, including the liberalization reforms themselves and the decisions of poor households. For the World Bank, the consequences of trade reforms - reduction of

⁷ Welfare refers to how efficient an industry is as a whole.

tariff and non-tariff barriers - for poor people depend on how it affects the labor that is their main asset⁸.

31. The effect of competition on the reduction of poverty and social inequalities, on the other hand, has not been the subject of consensus. Many member countries of the Organization for Economic Co-operation and Development (OECD) understand that competition can lead to rapid economic growth and low prices, but competition alone does not eliminate poverty⁹. Trade, anti-corruption and tax policies are needed to fight poverty.

32. Acemoglu and Robinson (2012), studied the difference in the degree of development between countries that focus on the role of institutions, classifying them as inclusive or extractive, conclude that inclusive institutions promote innovation, entrepreneurship and investment and boost economic growth and the well-being of the population. In contrast, extractive institutions foster the concentration of power and resources in a few elites, leading to poverty and inequality.

33. Other authors have studied the role of free competition in markets. Joseph Stiglitz (1981) has argued that markets are inefficient, while real competitive markets are very different from the competitive markets proposed by economic theory. Similarly, Ioana Marinescu and Eric Posner (2020), understand that real-world wages differ from those outlined in the world of the competitive ideal, where workers can switch jobs with alternative employers, and the wage is equal to marginal product. The real-world wage differs from the competitive ideal for many reasons, among which they cite employer monopsony, i.e., employers can set the wage below marginal product because of their dominant market position monopsony, BU

34. In theory, free competition should help the poor as entrepreneurs and workers. Competitive markets cause firms to allocate their resources where they are most productive and profitable. Competition would have an impact on economic growth, and thus higher incomes. The reality is that the market power of firms has increased. De Loecker and Eeckhout (2017) have shown that profit margins have increased significantly in the United States between 1950 and 2014, and suggest that this could be attributed to the market power of some firms. This increase in profit margins implies a percentage reduction in labor income.

35. The expansion of market power can be attributed to the proliferation of network markets, a rise in mergers and acquisitions, and regulations that favor established companies. In general, the relationship between competition and poverty is a complex one in which several factors must be considered, including labor market and trade policies. Competition policies play an important role in promoting consumer welfare, market integration and economic freedom.

36. There is no doubt that, when looking at the complex relationship between competition and poverty, we have to admit that the mere existence of a relationship between these concepts is the most reliable proof that competition policies affects poverty levels for better or worse.

⁸ World Bank. World Development Report 2000-01, Fighting Poverty.

⁹ Organisation for Economic Co-operation and Development (OECD). Policy Roundtables. Competition and Poverty Reduction, 2013

1.5. The social cost of anticompetitive practices.

37. Thomas Piketty (2013) in his analysis of the distribution of wealth and income verified that over several decades the growth of capital income (rent, dividends, interest, capital gains, among other forms of income related to asset ownership) has been 4% to 5%, while the growth of the economy averaged 1.5%. This implies that the accumulated wealth of asset holders is growing faster than production and labor income, such as, wages, salaries, bonuses, earnings from non-wage labor and other labor-related remuneration). (Organization of American States 2011).

38. In the United States, Gutierrez and Phillippon (2016), cited by Ennis Sean and collaborators¹⁰ have reported increased profit margins for companies. Also in Europe there has been an increase in profit margins, according to Weche and Wamback (2018).¹¹

39. Latin American markets have been characterized by high levels of market power and a small number of large companies. Profit margins have remained virtually unchanged from 1987 to 2015, and the revenues of large companies represent a large percentage of GDP. For example, in Chile the revenue of the 50 largest companies represents approximately 70% of GDP.

40. The Dominican Republic has highly concentrated markets in goods and services that are crucial for the low-income population according to the Herfindahl Hirschman Index (HHI), as shown in the following table extracted from public information provided by the General Directorate of Internal Taxes (DGII).

Table 1. Herfindahl Hirschman Index (HHI) of selected markets (2022)

Activity	IHH
Processing of pasteurized fresh liquid milk	9,992
Cereal-based food processing	8,868
Processing of oils and fats	8,700
Sugar processing	5,460
Health insurance	3,304
Freight transportation	2,674
Pension Fund Administrators	2,519
Multiple Banks	2,431

Source: Own elaboration based on DGII data.

41. Mexican professor Andrés Aradillas-López estimated in 2015 the impact of market power on the welfare of Mexican households. The research defined the welfare loss as well as the difference between observed prices and prices that would have existed under perfect competition. The result was that the monthly welfare cost to households was \$1,497 pesos, 15.7% of household income.¹² He also calculated the welfare loss of households by income deciles. The impact on the first decile was 30.9%, which can represent up to 33% of their income, while in the tenth decile it was 5.7%, confirming the hypothesis that the poor are more vulnerable to market power.

¹⁰ Inequality: A Hidden Cost of Market Power

¹¹ Ibid

¹² Federal Economic Competition Commission (COFECE). Market Power and Social Welfare, p. 92.

42. Stryszowska (2012), cited in the report *A Step Ahead: Competition Policy for Shared Prosperity and Inclusive Growth* (p. 22), estimated the loss of consumer surplus caused by the low degree of competition in the Mexican telecommunications sector. Consumer harm averaged US\$25.8 billion per year during the 2005-09 period, equivalent to 1.8 percent of Mexican gross domestic product (GDP) per year.

43. Cartels stand as one of the primary forms of anti-competitive behavior that result in inflated prices. Their existence imposes detrimental effects on both consumers and small producers. Consumers, especially the poor, suffer the major consequences of bid rigging practices in trade and public procurement. They tend to reduce their consumption of essential goods such as basic foodstuffs, health, transportation, purified drinking water and electricity, whether the cartelized good or any other essential goods. Cartels also affect the poor as suppliers by creating barriers to entry for small and medium-sized enterprises in cartelized markets.

44. The European Commission has estimated the annual cost of stealthy cartels operating in the European Union or in a single European Union Member State at between \$25 billion and \$69 billion euros¹³. The actual damage caused by cartels is likely to be higher than these figures, given that the clandestine cartels that are uncovered represent between 10% and 20% of the total.

45. Likewise, Ivaldi, Jenny and Khimich (2017)¹⁴ found that excess cartel profits detected in developing countries resulting from unjustified overpricing reached up to 1% of GDP. They further estimated an average overpricing of 24.02%.

46. In Latin America, cartels have also been uncovered that significantly affect the poor. Peru's Commission for the Defense of Free Competition sanctioned companies for geographically distributing oxygen tenders between 1999 and 2004. Similarly, the Administrative Council for Economic Defense (CADE) fined companies in the industrial gases market for price fixing, market sharing and bid rigging. CADE also uncovered a cartel in the gasoline market, which resulted in a 10% drop in prices after detection.

47. The enforcement of competition laws provides an essential deterrent to cartels and other practices that restrict production, raise prices and thereby erode purchasing power and diminish the welfare of citizens.

1.6. The impact of competition policy on productivity and competitiveness.

48. It has been stated that competition stimulates innovation and, consequently, productivity. Innovation increases dynamic efficiency through technological improvements in production processes, or the creation of new products and services. Competition also has an effect on productive efficiency by inducing firms to be more productive, and on allocative efficiency by causing a better distribution of resources both within and across industries.

49. Empirical research confirms the positive effect of competition on productivity through the mechanism of innovation. Cameron (2003) found that a 1% increase in research and development in UK manufacturing firms increased productivity by 0.2 to 0.3%. Similarly, a World Bank study of firms in Turkey during the period 2005-08 suggests that lower profit margins, resulting from a more competitive environment, could have a positive

¹³ United Nations Conference on Trade and Development (UNCTAD). Effect of cartels on the poor

¹⁴ Cartel Damages to the Economy: An Assessment for Developing countries

effect on productivity growth. Specifically, a 10 percent reduction in price-cost margins could lead to a 4.5 percent increase in productivity rate growth (World Bank 2017).

50. Similarly, empirical studies have quantified the contribution of a reallocation of resources to competitiveness-induced productivity improvement. For example, Foster, Haltiwanger, and Krizan (2006)¹⁵ found that the gains in labor productivity growth in the U.S. retail trade sector following industry reform in the 1990s, in their largest proportion, were caused by the reallocation of market shares from less productive incumbents to more productive incumbents.

51. Investigators Buso and Galiani (2014) tested the effect of competition on prices in the Solidarity program in the Dominican Republic, which is a conditional cash transfer to poor families for the purchase of food. They conducted an experimental investigation where they compared the effect of the entry of 61 firms into 72 markets that were part of the program. Six months after the entry of these companies into the market, prices were reduced by between two and six percent, and the quality of service improved.

52. On the other hand, low levels of competition have a negative effect on productivity. Nickell (1996), cited by Massimo Mota¹⁶ when studying approximately seven hundred UK manufacturing firms between 1972-1986 found that *"the higher the market share, a possible indicator of market power, the lower the firm's productivity levels"*. Similarly, Haskel (1991) found that concentrated markets and high market share have a negative effect on productivity.

53. Researchers Begazo and Nywan (2020) found that addressing anti-competitive behavior of firms and reducing government barriers to competition can have a positive distributional impact by reducing the price in key markets to poor consumers and increasing the rate of profit to small producers.

54. Competition policies also have an impact on competitiveness by encouraging innovation and productivity, although it is necessary to differentiate between the two terms, as they are related. Competition and competitiveness policies pursue the same objectives: to promote productivity and economic welfare. However, the intermediate objectives are different. Competition policies focus on preventing anti-competitive practices such as cartels and abuse of dominant position, and in comparison, competitiveness policies focus on the factors that determine productivity, institutional framework and public policies.

55. Gutman and Voigt (2014) found that countries with competition policy legislation have 2-3% higher GDP growth relative to those without. Similarly, the Productivity Commission of Australia (2005) reported that competition policy added 2.5% to Australian GDP¹⁷.

¹⁵ World Bank. The Effects of Competition on Jobs and Economic Transformation Page 20.

¹⁶ Competition Policy, p. 78.

¹⁷ OECD. Fact sheet on the macroeconomic effects of competition policy.

1.7. Competition policies in the National Development Strategy.

56. The Dominican Republic established in Law No. 1-12 as one of its development objectives, which contains the National Development Strategy, the creation of an institutional framework that promotes competition policies. Specifically, it provides for *"developing a regulatory environment that ensures an orderly functioning of markets and a pro-competitive business and investment climate within a framework of social responsibility"* (Specific Objective 3.3.1).

57. In addition, Specific Objective 3.3.1.2 states: *"To promote the operation of markets under conditions of competition and control of abuses of dominant position by strengthening the regulatory and institutional framework, in order to reduce costs and prices and increase the competitiveness of the economy in an environment of trade openness."*

58. In the Fifth Recital of the referred Law No. 1-12, emphasis is placed on the concern that this national development strategy may contribute to eradicate poverty in the country. In fact, the aforementioned recital states: *"That Dominican society interacts in an increasingly globalized world, increasingly based on knowledge and innovation, which conditions the national possibilities for sustainable development, raising the welfare of the population and overcoming poverty"*.

59. Therefore, the national authorities understand that within these lines of action and public policies that assume the overcoming of poverty as a development objective, the functioning of Dominican markets under free and fair competition schemes contribute as key factors to achieve this noble goal of "overcoming poverty".

2. Impact of PRO-COMPETENCIA PRO-COMPETENCIA in the fight against poverty.

2.1. PRO-COMPETENCIA: institutional radiography.

60. Article 50.1 of the Dominican Constitution imposes on the State the obligation to favor and watch over free and fair competition and to adopt such measures as may be necessary to avoid the harmful and restrictive effects of anti-competitive practices. In this sense, the State has created a network of governmental institutions with a certain level of autonomy to regulate the different markets according to their branch of specialization. Many of these sectorial market governing bodies have been assigned some functions of regulating and monitoring free competition in their respective markets. However, by means of Law No. 42-08, and in a way satisfying the mandate of the aforementioned Article 50.1 of the Constitution, a state agency has been created for the general supervision of free competition in the country: the National Commission for the Defense of Competition (PRO-COMPETENCIA).

61. The aforementioned Law No. 42-08, establishes as a model of competition authority, the so-called concurrent administrative model. In this model, there is an administrative authority responsible for investigating and sanctioning anticompetitive conduct, through separate internal bodies, with the affected economic agents having the right to judicial protection of the decision rendered in the administrative venue. This is the case in Spain and most of the countries in the Latin American region, where there is a competition authority.

62. The renowned Spanish professor, José Carlos Laguna de Paz (2016) points out the limits of the administrative sanctioning authority in this concurrent administrative model: "the limits of the administrative authorities should not be forgotten: (i) they cannot declare the nullity of the private-legal transactions on which the anticompetitive practices have been based or to which they have given rise; (ii) they cannot determine the damages to which the anticompetitive conducts have given rise. In this sense, private action complements, but does not replace the proper function of the competition authorities. The jurisdictional bodies can only partially repair the damage produced."

63. To reaffirm this criteria and validate that this is precisely the model of competition authority that prevails in the Dominican Republic, it is only necessary to observe that according to Law No. 42-08, PRO-COMPETENCIA cannot impose in any case condemnation in damages for the sanctioned anticompetitive conduct, nor annul it, although it is possible to order the cessation of the practice. In fact, according to article 50 of the referred legislation, any resolution issued by the Board of Directors must contain among other mentions: "The order of the cessation of the practices prohibited by law, within a determined term", but this is only in unfair competition.

64. In addition, among the accessory sanctions to the fine that may be imposed by the Board of Directors for the commission of infringements to free competition, paragraph III of Article 61 of Law No. 42-08, states the cessation of the sanctioned conduct: "The payment of the sanction does not imply the validation of the irregular situation, and the infringer must immediately cease the acts that gave rise to the sanction".

65. Since the annulment does not proceed, but the cessation of the anticompetitive conduct, the commercial operations that were carried out as a result of the sanctioned conduct continue to produce legal effects, what is ordered is simply a cessation or repetition of the conduct. If the affected party desires, in a separate judicial proceeding, the affected parties may sue for damages, including the nullity of the legal acts carried out under the protection of the anticompetitive conduct and which generated damages.

66. PRO-COMPETENCIA is a national institution, with a diverse range of attributions and powers; just as free competition can assume various dimensions within the Dominican legal system, this institution has various functions in its role of defending free and fair competition. One could say that it is a "polymorphic" public body, if we were to coin this term borrowing it from biology.

67. Pursuant to Article 17 of the referred Law No. 42-08, PRO-COMPETENCIA's authority has the fundamental role of "promoting and guaranteeing the existence of effective competition in the markets of products and services, through the execution and application of competition policies and legislation, and the exercise of investigative, reporting, regulatory, resolution and sanctioning powers".

68. As previously stated, the main objective of PRO-COMPETENCIA is to ensure the efficient operation of the markets through the effect of free competition; by generating a culture of good practices in the different branches of the national economic activity, as well as the promotion of public policies that foster competition by eliminating restrictions to the responsible exercise of the right to free enterprise.

69. This State institution is internally subdivided into two distinct bodies: the Executive Directorate, which is responsible for the study and investigation of complaints of anti-competitive practices in order to submit the case to the sanctioning administrative authority, and the Board of Directors, composed of five members (a president and four counselors), which in addition to having the legal power to impose fines if the case is sanctioned exercises administrative powers in the area of advocacy and promotion of competition.

70. PRO-COMPETENCIA not only has the typical functions of sanctioning that any other governing body in Dominican law may have; in addition to these powers, it also has, broadly speaking, powers to promote competition policies, which allows this institution to carry out activities that contribute to strengthen the culture of free competition in the country; powers of expertise and expertise, since public institutions and the governing bodies of sectorial markets must submit, under the terms of Article 20 of Law No. 42-08, the drafts of regulations or sanctioning resolutions that are related or may have an impact on free competition. 42-08, the drafts of regulations or sanctioning resolutions that are related or could affect free competition.

71. PRO-COMPETENCIA also has advisory and specialized advocacy commands under Article 31, paragraphs n) and o), of Law No. 42-08, which allows it to issue recommendation reports on the management of State institutions that may affect competition; it can also advocate during the process of formation of laws and other legal norms whose object may affect free competition, suggest to the Executive Branch national policies for the promotion and defense of competition, and even participate in the negotiation of agreements, conventions and international treaties on competition defense.

2.2. The role of competition promotion and advocacy as a conditioning factor for poverty eradication.

72. As previously established, the General Law for the Defense of Competition, No. 42-08, empowers PRO-COMPETENCIA to review the legal acts issued by the state entities¹⁸ and to further if they affect in any way the conditions of competition, proceeding to propose the pertinent measures, either to maintain or to reestablish competition.

73. The competition authority is also responsible for scrutinizing the impact that subsidies, grants or aid offered by the State to public or private companies may have on competition conditions in the market, submitting a report with recommendations aimed at requesting their adjustment or elimination, if necessary¹⁹.

74. From the foregoing it can be deduced that the advocacy function is a mechanism that helps to reduce the poverty gap to the extent that it prevents the creation of unjustified barriers that hinder the free functioning of the market, in addition to ensuring the elimination and/or cessation of those practices that may be affecting or impeding free competition.

¹⁸ Article 14. Review of state legal acts contrary to free competition. Without prejudice to the powers granted to other public entities, the National Commission for the Defense of Competition may address a public report to the respective authority, suggesting the adoption of corrective measures on the possible anti-competitive effects of laws, regulations, ordinances, rules, resolutions and other legal acts emanating from the public authorities, whose purpose or immediate or mediate effect, is to arbitrarily limit or impair free enterprise, hindering competition.

¹⁹ Article 15. Treatment of State aid. 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 report of recommendations, the suppression or modification of such subsidies, as well as the adoption of other measures conducive to the reestablishment of competition.

75. In addition, PRO-COMPETENCIA, this authority advocacy role includes the simplification and streamlining of procedures, thereby promoting the reduction of bureaucracy and the eradication of barriers to market entry.

76. As mentioned above, one of the powers of competition lawyers is to review state aids and subsidies that are advocated by the government, which means an "ex ante" evaluation of the proposals.

77. An example of the use of competition law for the treatment of state aid and subsidies that we can cite as an experience, and that we link in view of the indirect impact it has on the fight against poverty, is the "Public recommendation report on the Bill" which now has been implemented as Law No.6-22, 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 feeding of the Dominican family", published by this competition authority,

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

79. For the implementation of this measure, Law No. 6-22 in its Article 1, states²⁰ eliminating, for a period of six months the customs tariff applicable to goods classified in the tariff subheadings at eight 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, , 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 corn²¹ .

80. In this case, from the National Commission for the Defense of Competition, although we do not have 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, and that can find justification for a matter of common good.

81. Evidently, it is clear that from the point of view of economic competition, one of the possible interpretations would be the potential negative effect that could derive from taxing the customs duty applicable to the products at a zero rate for a period of six months, is that the elimination of such duty becomes a competitive advantage in favor of foreign companies. This occurs because these companies are exempt from paying customs duties to bring their products into the local market, whereas local producers of similar products are still burdened with the cost of customs duties for importing the necessary inputs to manufacture the same type of product locally.

²⁰ 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..."*

²¹ 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.

82. Another possible interpretation is that because of the increase in the prices of products of the basic food basket consumed by the Dominican population of scarce resources, a temporary intervention of the State was necessary through this type of subsidies and until a stabilization of prices in the world market takes place. This special 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.

83. PRO-COMPETENCIA, as competition authority, has recognized that although such measure would be totally inappropriate in ordinary circumstances, 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 security²², which requires guaranteeing the population's access to basic necessities and applying palliatives to counteract the inflation that could hinder access to them, and which undoubtedly contributes to the fight against poverty.

84. Given the extraordinary nature of the events that are causing the increase 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 try and 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 poorest²³. Thus, in special moments such as the present, the competition authorities must operate as a kind of harmonizer between economic rights and social purposes pursued by initiatives such as these that are implemented in a situation of socioeconomic crisis, contributing to counteract evils such as poverty.

85. 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 quotas to the volume 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 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 measures²⁴.

2.3. Incidence of competition policies on poverty reduction: Final reflection.

86. "Overcoming poverty" is one of the target objectives of the National Development Strategy 2030 of the Dominican Republic, instituted in Law No. 1-12. It is true, and this is supported by economic science, that poverty is significantly reduced by economic factors

²² Article 54 of the Dominican Constitution.

²³ 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.

²⁴ Falta esta cita.

such as economic growth, lower unemployment indicators, government social programs, reduction of labor informality and an efficient productive chaining process.

87. However, these are not the only factors that favor a reduction in poverty. There is another factor that, although less visible, also contributes to and even conveniently stimulates the economic factors we have mentioned. We are referring to policies that promote free competition.

88. In the Dominican Republic and in accordance with Article 217 of the Constitution, the economic regime is oriented to the pursuit of human welfare. In this context, free competition is one of the guiding principles of the Dominican economic regime. In the National Development Strategy itself -as we have already pointed out- objective 3.3. refers precisely to the convenience of having markets that function efficiently under the schemes of free and fair competition. To point out this objective in a national strategy that seeks, among other goals, to "overcome poverty" is to admit the incidence of competition policies in its reduction.

89. However, this is not the only reason why competition policies have an impact on poverty eradication; the economic literature itself provides case studies that demonstrate the following facts:

- For the World Bank (WB) the consequences of reforms to trade laws that reduce entry barriers to international competitors to national markets, favor the increase of employment rates, being this the main asset of poor people.
- Free competition encourages the participation of entrepreneurs and small MSMEs, a phenomenon that would not be possible if the markets had companies with abuse of dominant position. Andrés Aradillas-López (2015)
- The "cartelization" of public procurement processes has negative consequences for consumers, especially the poor, due to the overpricing involved. Stryzowska (2012)
- The competitive processes in the supplier markets of government social assistance programs produce a significant reduction in prices as a result of the high competitiveness due to the large number of participating companies, as demonstrated by Buso and Galiani (2014)
- Fight anti-competitive behavior of firms and reducing government barriers to competition can have a positive distributional impact by reducing the price in key markets to poor consumers. Begazo and Nywan (2020)
- The countries that have competition policy legislation have a 2-3% higher GDP growth compared to those that do not. Gutman and Voigt (2014).

90. As it was shown, there is a causal link between a solid and efficient market competition policy and the factors that contribute to the eradication or promotion of poverty. The impact of free competition is twofold: a market with effective competitive policies contributes to poverty eradication factors and, conversely, a market with weak competition controls becomes a harmful factor that increases poverty levels.

15. Ñopo, Hugo, and Sócrates Barinas. "Social and Labor Protection Policies in the Dominican Republic." UNDP LAC Working Paper No. 18, United Nations Development Program, 2021.
16. Organization for Economic Cooperation and Development. "Competition and Poverty Reduction." 2013.
17. Organization of American States. *Desigualdad e inclusión social en Las Américas: 14 ensayos*. Second. 2011.
18. Stiglitz, Joseph. *Potential competition may reduce welfare*. Edited by American Economic Review. Vol. 71. 2 vols. n.d.