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Law Enforcement in Informal Markets**

- Contribution from Curaçao -

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Session I: Competition Law Enforcement in Informal Markets

- Contribution from Curaçao -

The experience of Curaçao*

Executive summary

In Curaçao, the informal sector operates in close interaction with the formal economy. It consists largely of self-employed individuals and other difficult-to-observe operators who provide goods and services that may substitute for those offered by formal-sector businesses. In a small island economy such as Curaçao, even a relatively small number of informal suppliers can exert competitive pressure on formal businesses. However, their activities are often not captured in business registers, turnover data, or official sector statistics, making the scale and economic impact of the informal economy difficult to measure accurately.

The challenge for the FTAC is therefore not one of jurisdiction. Curaçao's competition legislation defines an undertaking functionally, by reference to whether an entity engages in an economic activity. Registration, legal form, the existence of a fixed place of business, and tax status are not prerequisites for classification as an undertaking. Moreover, the FTAC may request information from "any person" where necessary to perform its statutory functions. Accordingly, informal operators may fall within the scope of both the substantive competition rules and the FTAC's information-gathering powers.

Hence, the challenge posed by informality lies largely in its invisibility and the resulting absence of reliable data. Informal suppliers can be difficult to identify, locate, and engage; they may conduct transactions primarily in cash and maintain limited or no formal records. Consequently, market-share estimates based solely on turnover or the number of registered firms may be significantly distorted. The FTAC therefore needs to triangulate information from business registers and official statistics with interviews, information requests, customer evidence, and sector-specific output indicators.

Conclusions

1. Legal status of an economic operator is not the starting point for competition analysis. The starting point is whether an operator's conduct is producing anti-competitive effects or constitutes anti-competitive behavior.

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This contribution reflects an institutional perspective of the FTAC. The example of the diving sector concerns an ongoing investigation; the data and observations are preliminary and do not constitute final findings.

2. Informal activities should be included in the market definition and market-power analysis where customers consider them to be substitutes. The analysis should also consider differences in quality, safety, insurance coverage, and continuity of supply when assessing the degree of substitutability.
3. Output-based indicators can be more reliable than declared turnover in sectors with hidden activity. An ongoing investigation into recreational diving sector illustrates the value of using certification volumes as an indicator of market activity, rather than relying solely on the number of registered dive centers.
4. The FTAC's statutory information-gathering powers extend to informal operators; however identification, service, record quality and calculation remain practical constraints.
5. Improved access to administrative data with sector-specific data protocols, managed by a permanent inter-agency body would strengthen the competition law enforcement.

1. Introduction

1. The OECD-IDB call for contributions uses the International Labour Organization definition of the informal economy: economic activities by workers and economic units that are, in law or in practice, not covered or insufficiently covered by formal arrangements. This broad definition is useful because it covers more than businesses that are absent from the commercial register. It also covers situations in which rules formally apply but are not effectively enforced, or in which compliance costs discourage participation in formal arrangements (ILO, 2012; OECD, 2026).

2. Informal businesses may compete with formal firms and participate in anticompetitive conduct. Formal firms, otherwise, may use their market power to drive informal firms out of the market. The existence of informal markets affects the market definition, market shares, barriers to entry, competitive effects and remedies. It also forces the authority to collect reliable evidence of unidentified companies/individuals and to identify the individuals/companies to whom procedural acts and sanctions should be addressed. Hence, for competition authorities, identifying informality and measuring its size are challenging issues.

3. This contribution examines the interplay between informal economic activity and competition law from a Curaçao perspective. Its central proposition is that Curaçao's competition law applies to informal economic activity, which challenges the competition authority to identify and quantify these activities. Automatically excluding informal suppliers may lead to an overestimation of concentration levels and the market power of formal undertakings, while treating all unregistered suppliers as fully substitutable with formal suppliers may, conversely, underestimate their competitive significance.

2. Informal sector in a small island economy

2.1. A service-oriented economy

4. Curaçao is a small Caribbean island economy with a limited domestic market. It relies substantially on imports and has a large services (tourism and financial) sector. Unlike the larger Latin American economies, where informal activity occurs at greater scale in agriculture, manufacturing, transport, and wholesale trade, Curaçao's informal economy is shaped by its' service-oriented structure. Combining data from small Caribbean islands with data from larger Latin American economies, obscure these structural differences and can lead to misleading conclusions.

5. The 2007 study by Carolina and Pau described a wide variety of shadow-economic activities in the former Netherlands Antilles,¹ including construction and repairs, food prepared at home, street vending, vehicle maintenance, private tuition and professional services, domestic and care work, personal services and transportation. Most of these activities are labor-intensive and short-term, reflecting by the local description of 'lòra man,' which are small-scale activities undertaken to support a household, or by 'kue job' for freelance or non-contractual work.

6. Informal activities can also be carried out by firms in the formal sector. The formal sector consists of enterprises that are registered at the Chamber of Commerce. The statistics office compiles only data of the entities in the formal sector.

¹ Aruba, Bonaire, Curacao, Saba, Saint Eustatius and Saint Maarten.

2.2. Informal sector's estimates and their limitations

7. Currently, there is no up-to-date estimate of Curaçao's informal economy available. The study by Carolina and Pau (2007), estimated the shadow economy of the Netherlands Antilles at approximately 11% of GDP in 2005.

8. The study used three approaches. First, a direct labour-market approach using the 2004 and 2005 Labour Force Sample Surveys. It found that around 24% of employed persons in the Netherlands Antilles were informally employed and translated the available information into an estimated shadow-economy value of approximately 11% of GDP in 2005. The authors noted that the method likely understated the informal sector activities because it did not fully capture illegal activities, employees working less than four hours per week or those with second jobs.

9. Second, a currency-demand approach, which is based on the assumption that in the informal economy, cash transactions are preferred as it leaves fewer traces. The estimates show an increase from roughly 6-7% of GDP in the 1990s to around 11% in 2001-2003. This method is sensitive to assumptions about the reasons for holding cash, the velocity of money and the use of foreign currency. Third, the electricity-consumption method compared changes in electricity use with registered GDP. The difference is the change in the informal sector. The authors considered this method unsuitable for the Netherlands Antilles.

10. Research on macro informal economies is useful because it shows that different approaches reflect distinct aspects of the informal sector. However, effective competition analysis by FTAC requires up-to-date, sector-specific informal market information. The analysis must therefore identify informal market participants by sector and estimate the extent of their activities.

11. The 2026 FTAC Survey on Competition and the Investment Climate in Curaçao indicates that competition from the informal sector is a concern for businesses. One in four respondents (25%) reported that the level of competition from the informal sector is large to very large, suggesting that informal economic activity is perceived as having a meaningful impact on the operating environment for formal businesses. Respondents also identified the electricity and water sectors, as well as telecommunications, as the least competitive markets in Curaçao, reflecting their monopolistic or highly concentrated market structures.

12. A key policy priority emerging from the survey is the need to create a level playing field between the formal and informal sectors. Respondents emphasized that businesses operating in the formal economy often face regulatory, tax, and compliance obligations that are not borne equally by informal operators, resulting in uneven competitive conditions. From a competition policy perspective, this finding suggests that strengthening competitive neutrality should be an important area of focus for the FTAC. Measures that encourage formalization, improve regulatory enforcement, and reduce unnecessary barriers to operating formally could help foster fairer competition, support compliant businesses, and contribute to a more transparent and productive business environment in Curaçao.

3. Identifying and measuring informal participation in FTAC investigations

3.1. Sources of information

13. In practice, the FTAC identifies hard-to-detect suppliers using signals and complaints, interviews with market participants, sector studies, websites, and online platforms/marketplaces. Established firms, customers, and trade organizations are most likely the first to identify unregistered competitors because they observe price offers, customer switching, and the use of shared inputs or distribution channels.

14. To gather information, FTAC has established cooperation protocols both locally and internationally. FTAC has a formal cooperation protocol with the Central Bank of Curaçao and Sint Maarten, which provides a framework for cooperation and information exchange within the limits of each authority's legal mandate.

15. The Central Bureau of Statistics Curaçao provides aggregate sectoral data; however, it does not have data on the informal sector. FTAC has also sought information from Customs, but these efforts have not yielded data suitable for its investigations. Access to information collected by the Taxation Office is likewise difficult or, in some cases, impossible to obtain. Consequently, the existence of potentially useful administrative information does not necessarily guarantee that such information can be accessed in a timely or effective manner.

16. For each investigation, statutory information-gathering powers are indispensable. Article 6.2 of the *Landsverordening inzake concurrentie* (National Ordinance on Competition) authorizes designated FTAC officials, where necessary and reasonable for the performance of their tasks, to request information and inspect books, records, and other data carriers. Article 6.2(5) further requires any person to provide the cooperation lawfully requested. Accordingly, information requests need not be confined to the undertaking under investigation; they may also be addressed to competitors, customers, trade associations, certification bodies, and individuals operating in the informal economy.

3.2. Why triangulation is necessary

17. To obtain reliable and comprehensive information, reliance on a single data source is insufficient. Data from the Chamber of Commerce and the Statistical Office primarily identify formal entities and therefore may not capture all active suppliers. Tax data are unavailable to the FTAC and do not account for turnover generated through non-tax-compliant activities. Interviews can provide insights into hidden economic activity, but the information obtained may be influenced by the commercial interests of respondents. Platform, membership, and licensing databases can identify participating entities; however, they generally provide limited information on the scale or level of their economic activity. Moreover, even within the formal sector, turnover data is often treated as confidential. Consequently, where cash transactions are prevalent or financial records are incomplete, obtaining reliable turnover data remains particularly challenging.

18. FTAC therefore seeks convergence on data gathered among independent sources. A robust assessment of data by sector combines: the number of registered businesses; information from sector organizations; transaction or output volumes; customer records or procurement evidence; platform or certification data; and interviews with formal and informal operators. Qualitative statements are valuable as indicators, but they should not be converted into a numerical market share without corroboration.

4. Factoring informality into competition analysis

4.1. Market definition and market power

19. The market inquiry should cover suppliers operating in both the formal and informal sectors. The key question is whether customers consider products or services supplied by informal operators to be substitutes for those offered by formal suppliers. This assessment should consider the factors that influence customers' willingness and ability to switch between suppliers, including price differences, service quality, reliability, safety, insurance coverage, licensing, technology and certification standards, capacity, and geographic reach. The greater the extent to which customers are willing to switch between formal and informal suppliers in response to these factors, the stronger the evidence that the two types of suppliers compete within the same relevant market.

20. Informal participants usually offer a lower price due to tax and social premia avoidance. These offers can be considered as a suitable alternative by the customer, even though the offer may lack the same quality and delivery guarantees offered by the formal sector. The perception of the substitutability of the offer and its' risk assessment is sector specific.

21. Supply of informal sector can affect market-power/market share analysis. Excluding its output can inflate the market shares of known firms; allocating it without evidence can dilute those market shares artificially. The appropriate response is normally to use the best observable unit of output and test a range of plausible assumptions. Where market definition is uncertain, the FTAC can assess whether its conclusion is robust across alternative market boundaries and informal-supply estimates.

4.2. Ongoing recreational-diving investigation

22. An ongoing investigation by the FTAC into Curaçao's recreational diving sector has identified indications of informal activities operating within the sector.

23. The recreational diving sector comprises both established dive centers and independent certified dive instructors. These instructors provide diving training programs that include both theoretical instruction and practical open-water sessions. Unlike established dive centers, many independent instructors do not operate from a fixed business location. Information obtained by the FTAC from several established dive centers indicated that these independent instructors are commonly referred to within the industry as "trunk instructors" or "cowboys." According to the dive centers, many of these instructors lack a permanent local establishment, making it difficult for the authorities to verify their business registration, licensing status, tax compliance, social security contributions, and insurance coverage.

24. The structure of the recreational diving sector is largely shaped by international certification organizations that develop, establish, and administer diver training standards. The major certification agencies include PADI, SSI, NAUI, and SDI/TDI. Although these organizations differ in their business models and operational approaches, they share a fundamental characteristic: they rely on local diving professionals and affiliated diving centers to implement and deliver their respective training programs. This decentralized model enables international certification organizations to maintain standardized training frameworks while relying on local instructors to provide practical instruction and diver education within specific markets.

25. SSI generally requires its professionals to be affiliated with an authorized SSI Training Centre. By contrast, PADI permits instructors to operate independently, to partner with dive centers, or to establish their own businesses. Similarly, NAUI instructors may independently teach courses and issue certifications, while SDI/TDI also supports independent instructors. Consequently, internationally recognized certification systems expressly accommodate independent instructors as legitimate providers of recreational diving training, either independently or in cooperation with established diving centers.

26. Many established diving centers rely on independent diving instructors to provide training services. This indicates that informal and formal operators are economically interconnected rather than functioning as separate markets.

27. From a competition-law perspective, these observations raise important questions regarding market definition and market share calculations. Excluding independent diving instructors from this market could overstate the market share of established dive centers. Conversely, including instructors whose activities are only partially observable presents methodological challenges because reliable information on their number, output, and revenues is limited.

28. Accordingly, this case illustrates the importance of taking informal economic activities into account in competition analysis. Even where operators do not fully comply with regulatory, tax, or administrative requirements, they may nevertheless exert a meaningful competitive constraint on formal businesses. They should therefore be considered in the competitive assessment where there is sufficient evidence to indicate that they participate in the same relevant market.

29. Restricting the analysis to registered dive centers may miss certifications issued by instructors who operate independently of registered centers. Preliminary information suggests that approximately four-fifths of diving certifications issued in Curaçao were associated with a single certification system. However, when affiliated/registered dive centers are used as the unit of analysis, the corresponding share of certifications appears lower. This difference suggests that using dive centers as the unit of analysis may underestimate the actual market share of the leading international certification organization.

30. Importantly, this discrepancy does not by itself demonstrate that informal or independent dive instructors account for the difference. Other factors may also contribute, including differences in center size, tourist demand, referral arrangements, and instructor productivity. The results should therefore be interpreted as an indication that a center-based measure may not fully capture certification activity, rather than as direct evidence of unregistered instruction.

31. Certification volumes are a more promising output indicator than center counts because they can capture certifications issued by both centers and independent instructors. However, this indicator requires further refinement. The FTAC should distinguish between: (i) certifications completed in Curaçao and referrals that are partly completed elsewhere; (ii) certifications issued through local centers and those issued independently; and (iii) independently issued certifications and activities that are, in practice, informal under local registration, licensing, tax, and insurance requirements.

32. The case also illustrates the dual role of informal operators. Independent instructors may exert competitive pressure on established centers. At the same time, they may depend on a certification system for access to training materials, recognition and the ability to issue marketable credentials. Informality may thus affect both the measurement of competition and the assessment of exclusionary conduct by a more powerful formal organization. Final

conclusions on market definition, market shares, dominance or infringement are still pending as the research is ongoing.

4.3. By-object and effects-based cases

33. The importance of identifying and measuring informal economic activity depends on the theory of harm under competition law. In the case of hardcore cartels—such as agreements involving price fixing, bid rigging, output restrictions, or market allocation, the National Ordinance on Competition treats these practices as unlawful. By contrast, for non-hardcore agreements, the Ordinance provides a market-share safe harbour, exempting agreements where the market share does not exceed 30 percent. Identifying the participants and gathering the necessary evidence will be the biggest challenge.

34. In effects-based agreement cases, abuse-of-dominance investigations, and many merger assessments, the measurement of the informal sector is particularly significant. The size and capacity of informal suppliers can determine whether a restraint has appreciable competitive effects, whether a firm possesses market power, whether market entry is timely, likely, and sufficient, and whether a proposed remedy will effectively restore competition. Consequently, the scale of informality can influence the substantive outcome of a competition assessment rather than merely complicating the investigative process.

5. Enforcing the competition rules

5.1. Informal operators are undertakings

35. Article 1.1(r) National Ordinance on Competition defines an undertaking as an entity insofar as it carries out an economic activity. This functional definition does not require incorporation, registration in the commercial register, a fixed business address or compliance with tax and licensing requirements. An individual who independently offers goods or services in Curaçao can therefore be an undertaking. Informal status is neither an exemption from the competition rules nor, by itself, a competition-law infringement.

5.2. Information-gathering powers and procedural constraints

36. The legal reach of the information gathering power is broad: the duty to cooperate applies to 'any person', including individuals and legal persons. The FTAC's published enforcement practice confirms that non-cooperation can be sanctioned. In the case of DCTA, a registered taxi association repeatedly failed to provide requested information, and the sanction was ultimately upheld on appeal. In 2025, the FTAC imposed individual fines on two former board members of supermarket association SUVECU after they refused requests to appear and provide information. These cases confirm that the cooperation duty is not confined to the investigated undertaking or to currently registered officeholders.

37. For informal economic operators, the main obstacles are practical. An operator may not appear in a register, may lack a fixed address, may change contact details or trade names, and may keep no reliable accounts. This complicates identification, service of documents, due-process communication and verification. If turnover is unknown, the calculation of a proportionate fine also becomes more difficult. Information from customers, payment providers, suppliers, platforms, professional bodies and objective output records may therefore be needed to reconstruct its' activity.

5.3. Priority-setting policy of FTAC

38. The FTAC's published priority-setting policy does not distinguish between formal and informal undertakings. It considers consumer interest, the economic and social importance of the possible infringement, and whether intervention is effective and efficient. The authority also weighs the likely availability of evidence, the prospects of establishing and ending an infringement, whether another authority is better placed to act, and the resources required.

39. Applying a proportional approach to the informal sector has important implications. Many informal businesses in Curaçao are small, meaning that resource-intensive investigations into individual operators may have limited impact. This, however, does not justify a blanket exclusion of the informal sector from enforcement priorities. Priority may instead be warranted where informal actors coordinate market behaviour/participate in a hard-core cartel, collectively account for a significant share of supply, or are subject to exclusionary conduct by a formal firm with market power. Ultimately, enforcement priorities should be determined by the competitive significance of the conduct and its potential consumer harm, rather than by the formal registration status of the business.

6. Advocacy points of action

40. Curaçao's experience suggests that competition authorities need supportive evidence, to identify economic actors and reliable methods to measure sector-specific indicators. The following priorities would improve effectiveness:

6. Create a permanent inter-agency collaboration body. A small task force involving the FTAC, the statistical office, Customs, relevant licensing bodies, tax and social-security authorities and sector regulators. The goal of this body is to identify available datasets, legal gateways and the confidentiality constraints.
7. Develop sector-specific data protocols. Protocols should define the unit, geographic attribution, period. Certification volumes, passenger trips, bookings, platform transactions, imports, permits, electricity connections or customer purchases could for example be more insightful, then solely relying on turnover data.
8. Make informal participation in enforcement accessible. Informal businesses may be reluctant to complain because disclosure could expose unrelated compliance problems. Clear explanations of confidentiality, the scope of the FTAC's mandate and the confidentiality treatment of information can improve reporting while preserving due process and the rights of investigated parties.
9. Combine enforcement with formalization-oriented advocacy, such as the Department of Economic Affairs' "Mi NEGOSHI" program. This program provides support services such as mentoring, shared services, training and visibility for micro, small and medium-sized enterprises. The FTAC can support such efforts by explaining that registration and organization improve access to finance, customers and public support, while also improving the evidence base for competition policy. Formalization policy remains the responsibility of the competent government institutions.
10. Encouraging businesses within each sector to form associations. This can improve communication, and the quality and availability of sectoral data. However, greater sectoral organization should be developed with due regard to competition law, ensuring that industry associations do not become platforms for collusion, price-

fixing, market sharing, or other anti-competitive practices. Clear guidelines should therefore be established on the permissible and prohibited activities of sector associations.

7. Conclusion

41. The National Ordinance on Competition applies functionally to economic activity and empowers FTAC to request information from any person, including informal operators. The principal challenge, however, lies in identifying such operators and accurately measuring the scale and nature of their activities. Reliable information is essential for defining relevant markets, assessing market power, designing effective remedies, and determining appropriate sanctions.

42. For small island economies, measurement errors arising from the omission of informal economic activity can have significant consequences. A relatively small number of informal suppliers may nevertheless exert meaningful competitive pressure. However, differences in product quality, reliability, scale, or legal status may limit the extent to which informal and formal suppliers compete directly. Competition authorities should therefore neither disregard informal supply nor assume that it is fully equivalent to formal supply. A more robust approach combines sector-specific evidence, output-based measures, data triangulation, to assess the actual competitive significance of informal markets.

43. The ongoing recreational-diving investigation illustrates this approach. Counts of registered/affiliated centers do not necessarily capture independent dive instructors, while certification volumes provide a broader—though not yet sufficiently accurate—indicator of market activity.

44. A taskforce focused on administrative cooperation among entities, together with clearer data protocols aimed at developing a high-quality database, would enable the FTAC to translate qualitative market analysis into robust competition analysis.

Annex: A practical checklist for cases involving informal participation

1. Identify the economic activity and the persons performing it, independently of legal form or registration.
2. Test whether customers regard formal and informal offers as substitutes, including price, quality, safety, insurance, continuity and regulatory requirements.
3. Map all observable sources containing data: registers, sector bodies, platforms, customers, suppliers, output records, public authorities and direct information requests.
4. Select the most complete unit of data output and document its limitations; avoid relying solely on declared turnover when hidden cash activity is plausible.
5. Triangulate rather than assigning point estimates to unobserved supply.
6. Design remedies and sanctions that can be addressed, monitored and enforced against identifiable individuals while respecting due process.

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