

# OECD-IBD PEER REVIEWS OF COMPETITION LAW AND POLICY: DOMINICAN REPUBLIC 2024

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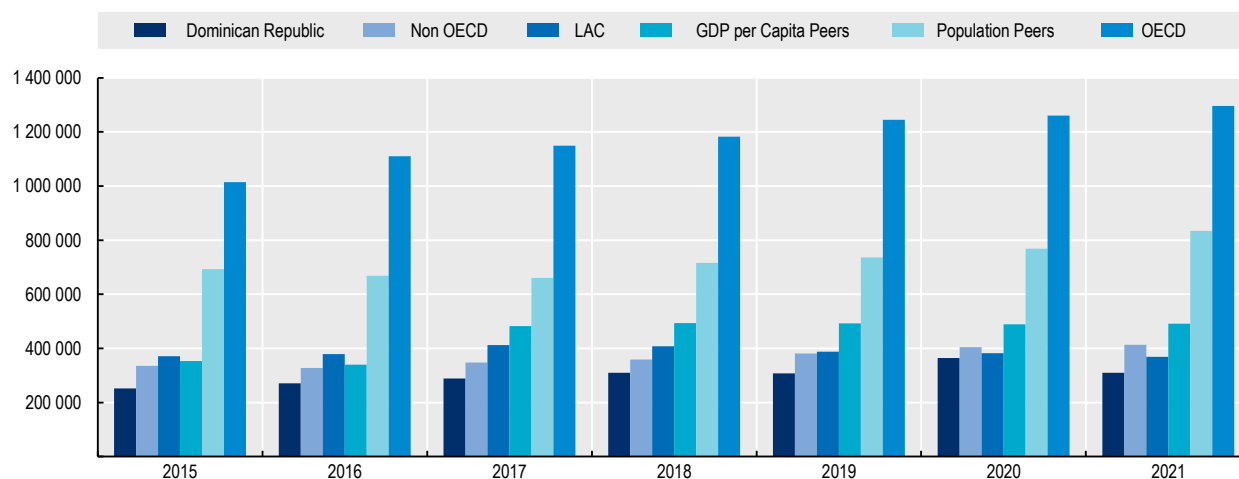
## Highlights from the OECD-IBD Peer Review on Competition Law and Policy in Dominican Republic

After 12 years of legislative process, the Dominican Republic adopted its Competition Act in 2008, which became fully operational in 2017 and enforced by Pro-Competencia, the Dominican Competition Authority. Following on that, an OECD-IBD Peer Review was conducted to review the Dominican Republic's Competition Law and Policy including the implementation of the Competition Act.

### Institutional and legal framework

Pro-Competencia is a decentralised and autonomous body. It is a legally independent entity, with legal status and administrative, budgetary, and organisational autonomy. Pro-Competencia's annual budget is considerably low for international and regional standards (Figure 1). Pro-Competencia's staff is also lower than comparable jurisdictions. Only a third of its employees are directly assigned to competition activities, the rest working in administrative support activities.

**Figure 1. Budget per capita (2015 EUR exchange rate), 2016-2021**



Source: OECD (2023), CompStats database, <https://www.oecd.org/competition/oecd-competition-trends.htm>.

Strategic planning at Pro-Competencia has been limited to its internal organisation. The Competition Act does not allow Pro-Competencia to set its own priorities regarding enforcement actions. The competition authority is required to investigate, at least preliminarily, all the complaints received and cannot reject them based on priority grounds.

The competition law framework includes a general competition law regime (enforced by Pro-Competencia) and sector-specific competition law regimes (enforced by key sector regulators). The existing legal framework is not always consistent, resulting in a patchwork of different competition rules applicable throughout the economy.

## Competition law enforcement

The Dominican Republic does not have a wide competition merger control regime applied to the entire economy, although certain merger control mechanisms exist in the telecommunications, electricity and financial sectors. Only the telecommunications regulator analyses the competition effects of the transactions, while the electricity and financial sectors focus on regulatory aspects.

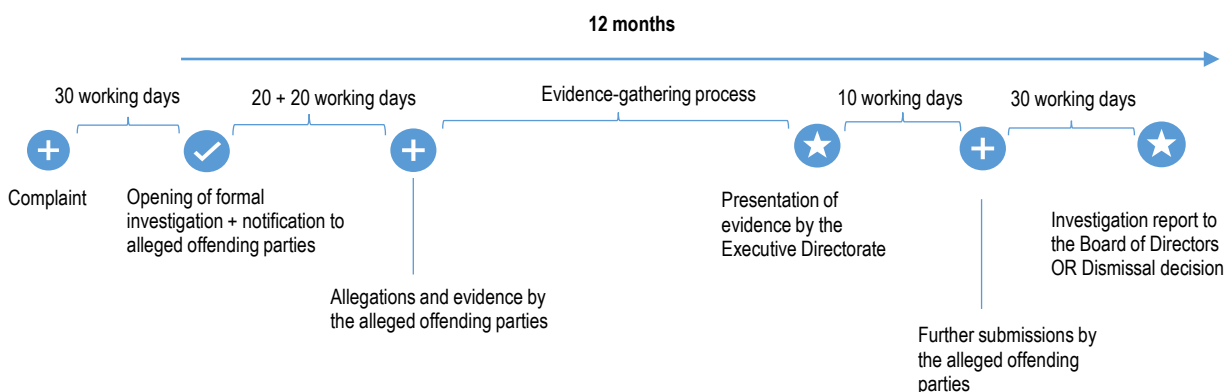
The Competition Act prohibits collusive practices and abuses of dominant position, relying on the notion of unjustified barriers. Collusive agreements are considered as per se infringements following a decision issued by Pro-Competencia. Anti-competitive vertical agreements between undertakings active at different levels of the supply chain are not covered by the Competition Act. The Competition Act does not address exploitative abuses (such as excessive prices) that negatively affect consumers. Unfair competition practices are also established as an infringement in the Competition Act.

Since 2017, when Pro-Competencia began its enforcement activities, it has only sanctioned two competition cases (regarding cartel and abuse of dominance, respectively). Sector regulators with competition enforcement powers have only adopted one enforcement decision related to competition law (in the telecommunications sector). No bid-rigging cases have been sanctioned.

Much of the resources of Pro-Competencia are devoted to the enforcement of unfair competition rules. Since 2022, following a decision issued by the Board of Directors, Pro-Competencia has tried to limit the unfair competition cases to those that seriously disturb the public economic interest.

Investigations are subject to a statute of limitation of one year that starts from the termination of the alleged anti-competitive practice, which seems very short compared to other jurisdictions. In addition, investigations are subject to a 12-months deadline to be finalised, which also seems too short, especially in complex cases (Figure 2). Besides, the 12-month expiration deadline can only be suspended in very limited circumstances.

Figure 2. Investigation phase



Source: OECD based on information from the Competition Act.

Pro-Competencia may start investigations *ex officio* or following a complaint by a party with a legitimate interest. The competition authority is required to publish complaints and the full version of the decisions to open formal investigations before the investigation phase starts, disclosing information that may be confidential or sensitive for the investigation.

Authorisations for dawn raids should be requested in accordance with the Criminal Procedural Code before a Criminal Court. So far judges have required that dawn raids are justified by indications of a criminal offence.

Although Pro-Competencia can request information to the investigated and third parties, the Competition Act does not provide any sanctions for absence of a response or a delay in replying.

The maximum fines established by the Competition Act are very low and based on minimum wages, with no deterrent effects on companies. Besides being an administrative infringement to be sanctioned by Pro-

Competencia (or the sector regulators with competition enforcement powers), cartel conduct is a criminal offence in the Dominican Republic to be prosecuted by the public prosecutor's office.

There is no leniency policy to fight cartels, although Pro-Competencia has adopted an internal mechanism to reduce fines (but not to grant immunity) in exchange of collaboration, with some similarities with leniency policies. Pro-Competencia has also introduced settlement and commitment mechanisms for an early termination of investigations. None of these mechanisms has ever been used in practice.

Pro-Competencia's decisions can be reviewed by the Superior Administrative Court. Decisions of the TSA may be subject to appeal on points of law before the Supreme Court of Justice, the highest jurisdictional body in the Dominican Republic. Dominican judges in charge of reviewing competition infringement decisions have an administrative and constitutional law background and are not specialised in competition law. Some judges received competition law training in 2008, when the Competition Act was formally adopted, but since then judges have not received further capacity building on the topic.

## Competition advocacy and institutional co-operation

Pro-Competencia has a multiple of tools to implement its competition advocacy powers, including market studies, non-binding opinions, guidelines, as well as training and outreach activities. Nevertheless, Pro-Competencia still lacks a clear strategy regarding advocacy initiatives.

Pro-Competencia's opinions on advocacy initiatives are non-binding. Authorities are required by the Competition Act to justify if they decide not to follow Pro-Competencia's recommendations, but this does not always happen in practice.

Pro-Competencia has developed an innovative market screening tool to better target market studies. Nevertheless, the number of market studies conducted by Pro-Competencia is below the average for international and regional standards, which may be explained by the limited resources of the competition authority. Moreover, Pro-Competencia has not developed a clear methodology and process for carrying out market studies.

The Competition Act requires that regulators with competition enforcement powers request Pro-Competencia to issue an opinion regarding competition infringement decisions. Pro-Competencia may also issue non-binding opinions on any act of sector regulators aimed at regulating markets or adopting competition infringement decisions.

Pro-Competencia has developed co-operation channels with a number of authorities and government entities in the Dominican Republic, especially sector regulators with competition enforcement powers. For instance, Pro-Competencia has signed a number of bilateral co-operation agreements to formalise and regulate the consultation and referral procedures.

Nonetheless, there are still insufficient levels of co-operation between Pro-Competencia and sector regulators in the application of competition law. For example, sector regulators do not always consult Pro-Competencia, despite the legal requirement.

Additionally, although the Competition Act establishes that Pro-Competencia should meet with different regulators to jointly design the competition regime that would govern the different sectors and activities up to 2019, this multi-lateral effort never occurred.

At international level, Pro-Competencia has promoted international co-operation mainly through the exchange experiences and knowledge. Pro-Competencia has actively participated in international competition fora and this voluntary peer review shows the country's commitment to continue developing its competition policy and law in line with international practices.

## Key Recommendations

1. Adopt a **common competition framework**, including both substantive and procedural rules, that uniformly applies across all sectors.
2. Strengthen **budgetary and human resources** dedicated to competition enforcement in Dominican Republic.
3. Enable Pro-Competencia to **prioritise enforcement and advocacy actions** based on transparent criteria, including the power not to take enforcement actions or to close investigations based on its priorities and/or availability of resources.
4. Adopt a general **ex-ante merger control regime** in line with OECD standards and international best practices.
5. Develop effective **anti-cartel detection tools** such as pro-active methods (e.g., economic filters and industry monitoring) and anonymous complaints.
6. Ensure that **sanctions have sufficient deterrent effects**. Maximum caps of fines should be based on flexible elements that allow to consider the specific circumstances of the cases and the markets affected in line with international standards.
7. Expand the **length of the statute of limitation** in line with international practices and increase the **timeline limitation to conduct investigations** and/or allow for more flexibility regarding the extension or suspension of investigation deadlines.
8. Introduce **deterrent fines** for failure to reply, late replies and the use of incomplete or misleading information regarding requests of information by Pro-Competencia.
9. Ensure that **co-ordination mechanisms** between Pro-Competencia and the sector regulators with competition enforcement powers are effectively implemented.
10. Empower another entity (for instance, Pro-Consumidor) with the **enforcement of unfair competition practices**. Alternatively, Pro-Competencia should limit its investigations related to unfair competition practices to those affecting the general public economic interest, freeing up resources to competition infringement investigations.

### Peer Reviews of Competition Law and Policy

OECD peer reviews have proved to be a valuable tool for countries to reform and strengthen their competition frameworks.

The mechanisms of peer reviews vary, but they are founded upon the willingness of a country to submit its laws and policies to substantive questioning by other peers.

The process provides valuable insights into the country under study, getting to the heart of ways in which each country deals with competition and regulatory issues, from the soundness of its competition laws to the structure and effectiveness of its competition institutions.

Furthermore, these reviews incorporate recommendations for changes in government policy.

**Argentina (2006)**

**Brazil (2010, 2005, 2019)**

**Chile (2004)**

**Colombia (2009)**

**Costa Rica (2014)**

**Czech Republic (2008)**

**Denmark (2015)**

**Ecuador (2021)**

**Eurasian Economic Union (2021)**

**El Salvador (2008, 2020)**

**European Union (2005)**

**Greece (2018)**

**Honduras (2011)**

**Kazakhstan (2016)**

**Latin America (2006, 2007, 2012)**

**Mexico (2004, 2020)**

**Panama (2010)**

**Peru (2004, 2018)**

**Romania (2014)**

**Russia (2004)**

**South Africa (2003)**

**Chinese Taipei (2006)**

**Tunisia (2022)**

**Turkey (2005)**

**Ukraine (2008, 2016)**

**Vietnam (2018)**

Access all OECD country reviews on competition law and policy at [www.oecd.org/competition/countryreviews](http://www.oecd.org/competition/countryreviews)