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Editor's Note. Consumer Protection Rights. Autonomous Microsystem of constitutional level.

The approval of Consumer Protection Bill is for us, a promise of advance in the building of this category of *constitutional civil rights*. This does not mean that we do not have critics and alternate suggestions to improve efficiency to the text that came from the House of Representatives, last month. However, it is fair to recognize that the intention and efforts for its adoption constitute, by themselves, undeniable merits attributed to legislators. In summary, where we can only mention certain key aspects, we consider that: **(a)** the text is improvable in determining functional autonomy of *Proconsumidor* included by articles 5.1¹,

¹ That composes the Directive Council by "representatives" of productive and consumer sectors. These public officials should not hold any exclusive level of representation of the production or consumer private sector, as can be deduced from this and other dispositions. This article refers to "representatives" of associations of businesses, service providers, health sector (this at least nominated in conjunction with the government and private associations), and two defense groups of consumers associations to be selected by presidential decree from a short list. This explanation may seem semantics, however it will avoid important perception errors and appreciation regarding the role that said public officer must play. If *Proconsumidor* is declared by law an autonomous organism, responsible for defining, establishing and regulate consume politics, wrongly it might count with a direct representation of the same interested sectors. The context of article 5.7, demonstrates that inadequate representation, it is not only an offensive use of the expression "representative" in article 5.1, integrates an in-depth intention, since it emphasizes a thematic division of the responsibilities of its members, as we will discuss. For us, these officers, should only be "candidates" submitted for their professional qualifications, by those sectors for the Dominican President's election. All should be capable of participating and deciding with regards to any aspects resolved by the Council. We understand that before the election and appointed by Decree, the nominated must follow some sort of public bidding, to prevent that people eliminated

5.2², 5.7³ y 5.8⁴; **(b)** duplication of

according to the project, are promoted by the involuntary unnoticed of the President to be part of the Directorate.

² The appointment of the members of the Directorate Council will be for two years and will be renewed for the same term. We consider that short cycles are contrary to the interests of encouraging independence in the directorate of this organism. The ideal period is at least 5 years and thus prevents coinciding with the electoral process.

³ The context and consequence of what this article foresees is highly concerning. It demands the presence of the President of the Directorate Council in order to have a session. This means that the absence of the Minister of Industry and Commerce or his/her delegate during an important decision taking of the organism, will jeopardize the functional and even financial autonomy of *Proconsumidor*, contrary to what it declares in article 3 of the Draft. If *Proconsumidor* will be a dependency of the Ministry of Industry and Commerce, declaration in article 3 should be abolished. The intention can not be ambiguous. Likewise, it worrisome the segregation of roles of the members of the Directorate Council, by discussion theme, by demanding the presence of determined representatives according to the debating theme. The text confirms the assumed criteria that the members more than representative of public interests, it will be the spokesperson of a diversity private interests involved, either consumer or providers or producers. This is a direct attempt to the neutrality with which all the members should participate during the review of any issue in the Council agenda.

Even more centralized and antidemocratic is that decisions of the Directorate Council must be taken by unanimous, when there is a quorum of 5 members. That is, the functional autonomy of *Proconsumidor*, is not such that. It is enough with one negative or absence of only one "representative" elected by the public or private sector, producer or consumer, to stop the progress of any programmatic, executive or regulative decision. In addition it is useless to appoint and pay 5 new officer, as well as a complete staff and exhaust other public resources, to be paid from the National Budget, if this people can not articulate in open discussion spaces, that will allow them to promote or disagree totally or partially, rulings and resolutions that corresponds to an organism that should be decentralized and technical. Both quorum and decisions should be by single majority, no matter which officer is absent or disagrees of the majority's opinion. It is recommendable to incorporate the written motivation of the dissident vote.

⁴ This disposition is perfect for discriminatory practices. According to the context, the Council can decide that some resolutions will not be applied nationwide. This means that

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administrative tasks should also be eliminated, such as, techniques and decentralize decision making, that in the current version is it in the hands of highly occupied officer that will not have time or competence to study numerous and varied instances that will be sent according to the text in the draft.⁵ **(c)** It also worries us the profile and some special attributions granted to some members of the main organization. *Proconsumidor* should not be presided by a directorate as if it were an incentive promotion for production law of the 80s. It should be led by public officers solely those debtors with the responsibilities of overseeing *public interests* and not a representation of production and consumer sector. **(d)** It also lacks of adequate principle logic framework that avoids lookups in Common Law, interpreting its dispositions, without first

Proconsumidor has the competence to reduce the general and common reach of everybody to active and passive rights in the Dominican jurisdiction. Any variety of convenient measures and exception regimes, can, thanks to it, allow certain actors to avoid the rulings in the market.

⁵ According to article 7.10 the Directorate Council recognizes all the hierarchical resources of the resolutions of the Executive Directorate and according to article 12, has the competence to represent the interests of the consuming population before any public authority and organism. This role we consider it unnecessary since it is a replicate of the role of the *Defensor del Pueblo* (Defense of the People), of the organisms and courts, as well as the role that civil organizations for the protection of the consumers. In addition, according to 7.10 the Directorate Council has the last word in the adoption of all public policy in this subject in ruling or norm. The duplication of resources and efforts of this disposition is a sure promise for a regulating function that will be delayed and inefficient. Does this mean that *Proconsumidor* will have specialist in banking, stock market, insurance, telecommunications, energy, public health, and other regulated sectors? Legal control does it not pertain to judicial instances? Were the drafters of this disposition not aware that practically all dispositions come from the regulating organisms that impact consumers of product or services? Will all the dispositions be invalid until *Proconsumidor* approves “unanimously” all the measures

examining and verifying direction and coordination of public orders that should build its objective and in addition constitutional principles in its microsystem (transparency principle, non discrimination, socializing of free enterprise), to be commented at another opportunity.

Even though of this and other remediable observations in the examination that the Senate of the DR, allows for the objectives until now, only in forced in *declaratory rules* contained in the Constitution and important international treaties, like GATT/94 and the San José Treaty, with respect to overall wellbeing and consequent real economic freedom, pass to accomplish *operating functions*, that perfects State of Law. In a mixed and open economy, that is, the consumers, are affected by the structural and joint realities that characterize conformation and functioning of national markets, providing that entity with guaranteeing instruments for minimal efforts to the exercise of *complete consent* and the *effective protection* of economic rights of the citizens, it should be for every good corporate citizen, an unquestionable civic concession.

Also it is fair to admit, that in the current state of Dominican Laws, there are frequently collisions by interested parties, in the interpretation of the scope of market relations, exhibitions of Common Law, industrial propriety rules, industries law among others, generating important administrative costs to the Government, both in repeating processes by Judicial Powers and antique formulas of administrative policy that exist in the Executive Power.

Our suggestion is to redirect the public debate about the pertinence and

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context of the proposed law, towards the basic rules of theory, discipline doctrine, as well as administrative and judicial practice followed in jurisdictions observed like paradigms of the judicial and institutional process for the professional class formed by lawyers and businesspersons. We understand that in the same way that a businessmen invests in resources to adequate its technological standard, improve their production process or train its human resources, for competitiveness, it should make an advancement for an updated judicial line that defends, as it is their legal right, its individual interests, but recognizes the guarantees the Law stipulates, to the social impact of exchange relations.

Monetary and Financial Regulation. **Resolutions of the Monetary Board.**

The Monetary Board published on March 14, 5 resolutions issued on the 10th of the same month and granted a five day period starting from the publishing date to receive comments for the ruling and reform of the project. The most relevant dispositions in each Resolution are herein detailed: **(1) Third Resolution** reforms literal c) of Table Num. 1 of Article 13, Article 33 and Table Num. 9 of Article 32 of the Assets Evaluation Ruling, approved by this organization on December 29, 2004 and grants the period abovementioned to interested parties to provided their opinion. Meanwhile, **(2) Fifth Resolution** publicly announces Market Risks Draft Ruling, with the objective of gathering opinions of interested parties. On the other hand, **(3) Sixth Resolution** authorizes the publication of the Liquidity Risks Draft Ruling, with the purpose of obtaining the opinion of interested parties, also, modifying published version for consulting

purposes that the Monetary Board issued through Third Resolution on April 29, 2004. **(4) The Seventh Resolution** authorizes the publication of the *Elaboration and Publication for Consolidated Financial Statements*, with the same purpose as the previous resolutions. **(5) Finally, the Thirteenth Resolution** introduces modifications to article 58 of Exchange Rulings, approved by the Monetary Board in its First Resolution of February 5, 2004, with the purpose of unifying the term granted to the exchange agents and money transfer agents and the exchange for the results of the independent external audit. These sectors must send to the Superintendence of Banks and to the Central Bank no later than March 15, 2005 their audited financial statements corresponding to the Fiscal Period ended on December 31, 2004.

Telecommunications. INDOTEL initiates a public consultancy to modify the Ruling for Controversies Solutions between Users and Public Services Telecommunications Providers.

The Dominican Institute of Telecommunications issued Resolution No. 25-03 on March 3, 2005, initiating the public consultancy process to modify the "Ruling for controversies solutions between users and public services telecommunications providers," which is available in the institution's webpage.

Energy. The European Commission notified its Members of the delay in the implementation of the European Legislation of Biofuel.

On March 18, 2005, the European Commission announced that it sent summon letters to Germany, Austria, Belgium, Cyprus, Slovakia, Slovenia,

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Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Luxemburg, Holland, Portugal, Czech Republic and Sweden, Members that have not yet communicated its goal for biofuel for the year 2005. This legislation demands that biofuel represent a percentage of all the diesel and petroleum derivatives sold to the Members, starting with 2% this year and progressively increase until reaching a minimum of 5.75% of the fuel sold by year 2010.

Biofuels are fuels that can easily replace conventional fuel or mixed with it, and are obtained through a process of treatment or fermentation of several biological sources not fossils, such as vegetables oils, sugar beet, cereals, and organic residues, among others. In addition, under the European administrative authority that is playing an important role in the politics of energy and transportation. The biofuel represent a possible alternative to gasoline and gas oil as the fuels for transportation. Biofuel helps the fight against climatic changes preventing gases of greenhouse effect, they also diversify energy sources; reduce dependency of oil imports; and finally, offer new markets for agriculture.

Telecommunications. Free and Loyal Competition Ruling is approved for the Telecommunication sector.

The Dominican Institute of Telecommunications (INDOTEL) approved last February 24 through Resolution No. 022-05, the Free and Fair Competition for the Telecommunication Sector. This rule has the following chapters: 1st. General Dispositions (Art. 1-5). 2nd. Competition's Restrictive practices.(Arts. 6-10). 3rd. Competition rules related to services provisions to end-users (Art. 11). 4th.

Control for economic concentration in the telecommunications sector (Arts. 12-15). 5th. Unfair Competition (Arts. 16-17). 6th. Procedures and sanctions (Arts. 18-25).

Transportation. The European Commission takes action against illegal "Open Sky" agreements.

The European Commission announced last March 18 sending written requests and rulings caused by the State Members that keep services agreements for air transportation with the United States, with the argument that these agreements have nationality clauses, granting advantages of the agreements only to companies of the signing States. This is in violation of the dispositions under the Treaty related to *freedom of establishment* of the European Law. In addition, some of these agreements breaking the exclusive competition of the European Union when discussing air politics with third countries, such as schedule strip and reservation information systems.

Parallel to the previous actions, these State Members are being subject of infractions proceedings, after the measures adopted on July 2004 serve sentence of "open sky" of the Justice Court (IP/04/967 and IP/04/1478). The Commission sent rulings caused to Austria for similar agreements with Syria, Egypt, Cuba, and China. Jacques Barrot, Commission vice-president, who is responsible of transportation politics, will travel to Washington at the end of March, in order to find common approach with the American authorities to restart negotiations to create a global agreement.



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In April, we invite you to read other NP collaborations:

(1) *Anulación y Menoscabo, nueva frontera jurídica de la razonabilidad económica del TLC* (Annulation and Reduction, DR-CAFTA new legal frontier for economic reasonability) for the Column *Ley y Mercado* in **Revista Mercado**; **(2)** *El Estado Social de Derecho en el Derecho Público Económico Dominicano* (The Social State of

Law in the Dominican Public Economic Law) special report for **Gaceta Judicial**.

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