

Unclassified

DAF/COMP/AR(2016)42

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

17-Oct-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)42
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN COSTA RICA

-- 2015 --

29-30 November 2016

This report is submitted by Costa Rica to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 29-30 November 2016.

JT03402915

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

1.	Changes to competition laws and policies, proposed or adopted.....	3
1.1	Summary of new legal provisions of competition law and related legislation	3
1.2	Other relevant measures, including new guidelines.....	3
1.3	Government proposals for new legislation.....	4
2.	Enforcement of competition laws and policies	5
2.1	Action against anticompetitive practices, including agreements and abuses of dominant positions	5
2.2	Mergers and acquisitions	8
3.	The role of competition authorities in the formulation and implementation of other ` policies	12
3.1	COPROCOM.....	12
3.2	SUTEL.....	13
4.	Resources of competition authorities	13
4.1	Resources overall (current numbers and change over previous year):.....	13
4.2	Human resources (person-years) applied to:.....	14
4.3	Period covered by the above information.....	14
5.	Summaries of or references to new reports and studies on competition policy issues.....	14
5.1	COPROCOM.....	14
5.2	SUTEL.....	14

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 COPROCOM

1. During the year 2015 no normative changes regarding the scope of the Law on Promotion of Competition were made, however, monitoring the reform issues in the year 2012 was constant, in order to have the necessary resources to achieve the best implementation of the mentioned reform.

2. In addition, thirteen instruments that form part of the initial memorandum to join the OECD were studied, among these: Cooperation between member countries in areas of potential conflict between competition and trade policies, International Cooperation in Procedures and Research in Competition, Review of the Mergers Regime, Combat to the Collusion in Public Procurement Process, Structural Separation of Regulated Industries, among other instruments that make up the recommendations issued by that organization, which compliance forms the requirements and standards that a country must meet to join.

3. The results from the peer review to which the Commission submitted on policy and competition right, continue to create awareness and identify the need for a change, leading this body to reconsider the observations made by the OECD and value a more real logistics to meet most of the established recommendations.

4. As part of the efforts and following the diagnosis made by the OECD, the Executive Branch presented in December 2015, a draft reform of Law No. 7472, which provides for changes in the structure and constitution of the authority, the scope of action, increased powers of the body, improving human and economic resources, strengthening the regime of fines, thus integrating the aspects mentioned in the interest of promoting the competition policy in the country.

5. Regarding the project mentioned, it should be indicated that this was made available to the OECD Competition Committee, with the aim that the agency will carry out the relevant assessments hence the OECD issued a report with some observations for their respective study.

1.1.2 SUTEL

6. No new legal provisions of competition law and related legislation to report.

1.2 Other relevant measures, including new guidelines

1.2.1 COPROCOM

7. Result of the implementation of the project of Market Research in Latin America which involved the following countries: Chile, Colombia, Mexico, Peru, Costa Rica and Panama, and was sponsored by the Prosperity Fund of the Ministry of Foreign Affairs and the Commonwealth of the Nations United, it has a guide for the development of market research, with clear guidelines on this tool and the development of the studies so that consumers, businesses, and other organizations understand what the goal of a study and what the results may be. This tool is fundamental to the performance of the competition agencies.

1.2.2 SUTEL

8. On February 26 of 2015, the SUTEL published its guidelines regarding unlawful practices (*Guidelines for the Analysis of Anticompetitive Practices*)¹ and mergers (*Guidelines for the Analysis of Mergers and Acquisitions in the telecommunications markets*).²

9. At the beginning of the year, the OECD study about *Competition and Market Studies in Latin America. The case of Chile, Colombia, Costa Rica, Mexico, Panama and Peru*, was presented to the public.

10. The SUTEL continue with this project and started working with the OECD in the drafting *Guidelines for Market Studies*.

11. The SUTEL also launch in its institutional webpage a specialised section dedicated to competition matters, where you can find all the Council decisions on unlawful practices and mergers, notifications of merger filings and the guidelines above mention.³

12. Also in 2015, the Competition affairs bureau of the General Directorate of Markets finished working in the proposal of a methodology for SUTEL to analyse the level of effective competition in the telecommunications market. This proposal was sent to Coprocom for its analysis. The Coprocom rendered a favourable opinion of the methodology, concluding that it includes all the necessary elements to go forth with the analysis to determine the effective competition of the telecommunications markets.

13. The Council of SUTEL on May 13, 2015⁴ issued the resolution RCS-082-2015 of 12:50 hours in which it adopted the proposed methodology. This resolution was publish in the Official Journal on June 1, 2015.⁵

1.3 Government proposals for new legislation

1.3.1 COPROCOM

14. At this time there is a proposal to reform the competition law, submitted by the Executive Branch as previously indicated. This reform incorporates comments originated in the assessment of the OECD. The project is currently in the legislative process for their respective discussion.

1.3.2 SUTEL

15. By the end of 2015, SUTEL started to work with the Ministry of Economy, Commerce and Industry (MEIC) and the Ministry of Foreign Trade (COMEX) in drafting a document to introduce into our legislation the recommendations of the *Peer Review of Competition Law and Policy in Costa Rica* done by the OECD / BID in 2014.

¹ https://sutel.go.cr/sites/default/files/2015_sutel_guia_analisis.pdf

² https://sutel.go.cr/sites/default/files/2015_sutel_telecomunicaciones_guia.pdf

³ <https://sutel.go.cr/pagina/que-hacemos>

⁴ Agreement 010-024-2015

⁵ Electronic version of Supplement N° 39 of the Official Journal La Gaceta N° 104

16. To work in drafting a bill to amend the Law 7472 for the Promotion of Competition and Effective Consumer Protection a working group was created with representatives from the Ministry of Science, Technology and Telecommunications (MICITT), MEIC, COMEX and SUTEL.

17. The working group started to review the proposal drafted by MEIC from the recommendations of the Peer Review.

18. SUTEL participated in the meetings with OECD personnel that guided us in understanding the recommendations and the best way to include them in the bill in order to comply with the best international practices.

19. The work mainly centred in the following recommendations:

- Expand the scope of the national competition law
- Institutional design of the national authority (more autonomy and independence, full time commissioners)
- Procedures designed for conducting investigations and imposing sanctions that consider the complexities and specifications of competition matters.
- Sanction schemes, with fines that efficiently deter illegal conduct and generate incentives to market agents to cooperate with the authority. Including sanctions for those economic agents and individuals that help contribute in the execution of anticompetitive conducts, that impede the implementation of dawn raid by hindering, destroying or altering relevant information, as well as for those that deliberately refuse to hand in requested information from the authority.
- Provide powers to grant leniency the whistleblowers that come forward with information about cartels.
- Ban the possibility of notifying mergers after the execution of the transaction.
- Strengthen advocacy powers to include the promotion of procompetitive legal frameworks, by opinions and market studies.

20. The working group continue to work on the bill to amend the Law 7472 well into 2016.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities

2.1.1.1 COPROCOM

21. Since the year 2015, about seven researches were carried out in different markets as part of the tasks of competition advocacy.

22. Also in the past there have been efforts in the advocacy field, however, it is required more participation and presence as competition authority, by incorporating into relevant issues that require

further attention to ensure that at national level the importance and the need to strengthen competition at the level of public policy is understood thus achieving more competitive markets.

23. The attention of the public and private sectors has been extensive, as a number of trainings have been given in these sectors, trying to raise awareness of the issue and how to prevent anti-competitive practices as well as the instruments that the authority has to advise and attend the call that a managed can make to possible violations of the law.

24. The comments noted by OECD are continuously being formulated and the observations made are incorporated in order to implement international best practices in the performance of the competition rules. The advocacy issue is qualified as a fundamental task of the competent body.

25. Competition Authorities and Courts: Currently, the record- 09-001871-1027 -CA involving pension operators for violation of Article 12 of the Competition Act, is still in the Court of Cassation of Action under Administrative Law.

26. The Records 13-003925-1027-CA, 13-007009-1027-CA, relating to the infringement of Article 12 paragraph d) of which is investigated ICE-Huawei, record CE 01-08 of the Appliances Market, the cause 030-12 which involves the tender (Redondel de Toros) and finally, the case 07-09 D remain under study by the Court of Action under Administrative Law.

2.1.1.2 SUTEL:

27. There were the following Court actions to report in the telecommunication sector in the year 2015.

1) Case file number 15-005029-1027-CA: Action brought against SUTEL by ICE because of the fine impose on the company of USD 4.010.829,37 (€2.157.826.200,00) for margin squeeze in the service of termination of national mobile phone calls. This case is under study by the judge of the administrative court and we are waiting for the Court to set a date for trial.

2) Case file number 15-008128-1027-CA-2: Action brought against SUTEL by MILLICOM COSTA RICA S.A. because of the blocking of the merger with TELECABLE ECONÓMICO TVE S.A. The administrative court (*Tribunal Contencioso Administrativo, Sección Sexta, Segundo Circuito Judicial de San José, Goicoechea*) by the vote N° 53-2016-VI of 16:05 hours of April 1, 2016 rule in favor of the SUTEL and declared the action brought against SUTEL inadmissible.

2.1.2 Description of significant cases, including those with international implications.

2.1.2.1 COPROCOM

28. The Commission received on April 30, 2015, the notification of the concentration involving the acquisition of certain assets of the business division of AB Electrolux Appliances General Electric and Mabe Holding S.A.

29. This transaction has the intervention of General Electronic Company through Mabe Holding as minority shareholder. In this case the holding company Mabe S.A. in its capacity as bidder signed a preliminary agreement for the sale-purchase of shares through a public offering of acquisition in order to get all of the common shares Series L and all of the preferred shares Series belonging to the issuer.

30. The Electrolux agent pointed out that the purpose of the transaction was to create a platform for growth in the sector of Home Appliances of North America and allow that the combined business will more efficiently meet consumers of that subcontinent.

31. Other aspects that must be highlighted is that at the conclusion of the study and the assessment of the markets involved, the substantial power, the participation fees, the possible anti-competitive effects, the coordinated effects that could arise if the operation is approved, the parties managed the formal request for withdrawal against the notification made in the month of April, arguing that one of the parties had communicated its decision to terminate the agreement, and that due to that event which corresponded in compliance with specific provisions of the agreement was to manage the request for termination of the procedure.

32. Actually this case had no major implications because the transaction was not completed since the parties decided not to continue the process, however, it should be indicated that catches the attention of this Authority that in September 2014 notification was received about the same transaction and then the withdrawal was presented. The interesting thing about all this is that possibly at international level this could have occurred in other legislations since this is a company that is represented in multiple laws for its wide coverage level of products and services, however, the mystery remains given that the process was formulated twice without thrive.

33. We do not have an illustrative case with international scope or presence or greater impact on the system.

2.1.2.2 SUTEL

34. In the telecommunication sector, the following four cases were concluded in the year 2015:

- 1) The first case was a complaint brought by a cable operator (*Telecable Económico TVE S.A.*) against contra another cable operator (*Amnet Cable Costa Rica S.A.*) for abuse of dominance (discrimination, exclusive dealing agreement, predatory pricing, general prohibition). The investigated conduct consisted in *Amnet* offering *Telecable* clients the subscription of cable television service at a promotional price. The Council RCS-17-2015 of January 28, 2015, consider that there was no sufficient evidence to prove that the promotion launched by *Amnet Cable Costa Rica S.A.* was against Article 54 paragraphs a), g), i) and j) of the Law 8642 (Decision N° RCS 17-2015, case file OT-00066-2011)
- 2) The second case was a complaint brought by a mobile phone operator (*Telefonica de Costa Rica, TC S.A.*) against the incumbent operator (*Instituto Costarricense de Electricidad*) for abuse of dominance (margin squeeze) in the national termination service calls. The Council determine that ICE was directly responsible for committing a very serious infringement of Article 67 subsection a) sub paragraph 13) regarding Article 54 paragraph j) of the Act 8642 and Article 17 Regulation Regime Telecommunications Competition and imposed a fine of USD 4,010,829.37(€2.157.826.200,00) (Decision N° RCS-088-2015, case file OT-00212-2011)
- 3) The third case was a complaint brought by a regional cable operator (*Cable Plus S.R.L.*) against a national cable operator (*Millicom Cable Costa Rica S.A.*) for abuse of dominance (discrimination, predatory pricing) in the subscription of cable television service at a regional level. The Council consider that there was insufficient evidence of the existence of discrimination or a predatory pricing, so there is no merit to proceed with the opening of administrative proceedings in accordance with Article 54 paragraph a), i) of the Law 8642 in conjunction with articles 8 and 16

of the Regulations on Telecommunications Competition Regime (Decision N° RCS-221-2015, case file PM-01520-2014).

- 4) The final case a complaint by consumers (Néstor Alfaro Rivera and Johan Arias Muñoz) against a national cable operator (*Televisora de Costa Rica S.A.*) for abuse of dominance (tying) of the residential internet access service with cable television service at a regional level. The Council considered that there is insufficient evidence to prove market power and abuse of dominance, so there is no merit to proceed with the opening of administrative proceedings in accordance with Articles 13, 14 and 15 of Law 7472 in accordance with the provisions of paragraph 54 of Law 8642. (Decision N° RCS-154-2015, case file PM-00260-2015)

35. No significant cases with international implications to report in the telecommunications sector.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws;*

2.2.1.1 *COPROCOM*

36. As indicated above, in year 2015 an approximate number of 24 notifications of economic concentrations in various Sectors were analyzed, however, all were approved. The number of concentrations is very similar to the 2014, report which is the result of the establishment of the procedure of prior notification of concentrations.

Number of reported and revised concentrations for 2015

NO. VOTE	COMPANIES INVOLVED	DATE OF RESOLUTION	MARKET
03-15	TRC TRADING CORPORATION (TRC) AND ARROCERA EL PORVENIR	01/20/2015	Rice Market
12-15	UNILEVER N.V. & PROCTER AND GAMBLE COMPANY	03/24/2015	Toilet soap market
13-15	MEXICHEM S.A.B. & VESTOLIT	03/24/2015	PVC Pipes
14-15	ESSILOR & GRUPO VISIÓN	03/24/2015	Ophthalmic Lenses
16-15	HOTEL FIESTA Y SUEÑOS DEL PACÍFICO	03/31/2015	Hotel Sector
17-15	PFIZER INC Y HOSPIRA	03/31/2015	Drugs Market
18-15	COCORISA Y FOTOLIT	04/14/2015	Packing Market
19-15	HERAUS UV SOLUTIONS GMB Y NEOMETRICS	04/14/2015	Medical Device Market
20-15	INVERSIONES ANDROS S.A., por la suscripción de una alianza comercial con CPG REAL ESTATE LLC.	04/14/2015	Real Estate Sector
30-15	CUESTAMORAS SALUD S.A. Y OLT INVESTMENTS INC Y SOCOFAR S.A.,	06/23/2015	Various markets
34-15BIS	INTELECTIVA COSTA RICA S.R.L. y KENTUCKY FRIED CHICKEN COSTA RICA	08/11/2015	Fast Food sale
35-15	INVERSIONES EÓLICAS DE COSTA RICA S.A. Y GLOBEIQ MESOAMÉRICA ENERGY (WIND) LTD Y SUBSIDIARIAS	08/11/2015	Domestic Energy Market

NO. VOTE	COMPANIES INVOLVED	DATE OF RESOLUTION	MARKET
36-15	KERRY COSTA RICA, S.A., Y BALTIMORE SPICE CENTRAL AMERICA, S.A., Y KING TAMAR INVESTMENT, S.A.	08/11/2015	Processing and distribution of: Seasonings, Bakers, breeding and Ingredients at industrial level
37-15	AB ELECTROLUX Y GENERAL ELECTRIC COMPANY	08/11/2015	Appliance Market
44-15	CADENA DE HOTELES BARCELÓ CORP. EMPRESARIAL, S.A. Y OCCIDENTAL HOTELES MANAGEMENT, S.L.	09/08/2015	Hotel 4-5 stars tourism sector
50-15	EMPRESA 3-101-698698 S.A. Y FARMACIA CHAVARRÍA S.A.	09/22/2015	Marketing of drugs (manufacture, distribution and retail)
56-2015	Tyco International Holding, por la compra del 100% de las acciones de Circuito, S.A., Commission Consulting Company C.T.S., S.A., y Kumma S.A.	10/13/2015	Security services for alarm monitoring; security systems for the detection / fire fighting and multiple support services
58-2015	Made in Austria S.A., Breymann Motorsales S.A. y Distribuidora de Repuestos Europeos para Motocicletas S.A.	10/27/2015	Marketing high-end motorcycles
61-2015	Siembras Globales Siglo, S.R.L. compra de los derechos del fideicomiso El Porvenir- BCT / Dos mil catorce, de parte de Inversiones Sábalo, S.A.	11/10/2015	National market for the production of rough rice input
64-2015	Greatbatch, Inc. y Lake Region Medical Holdings, Inc.	11/17/2015	OEM supply of medical devices for cardiac and vascular applications
66-2015	Grupo Empresarial de Supermercados, S.A. (GESSA), dada la compra del establecimiento "Super San Pablo"	12/01/2015	Retail Sale of supplies
67-2015	Empresa 3-101-689687, S.A.), dada la compra del 100% de las acciones de Uniban de Costa Rica, S.A.	12/01/2015	Banana Production for Export
69-2015	Enel Green Power Costa Rica, S.A., Molinos del Viento del Arenal, S.A. y Tierras Morenas, S.A. y a Aerogeneración de Centroamérica, S.A.	12/15/2015	Private Power Generation
70-2015	KKR & Co. L.P., por la adquisición de la empresa SoftwareOne Holding AG	12-15-15	Computer Services

2.2.1.2 SUTEL

37. In the year 2015, the SUTEL review nine mergers in the telecommunications market.

Number of Mergers that were reviewed during the year 2015

N°	N° VOTE	BUSINESSES INVOLVED	DATE OF RESOLUTION	TYPE OF OPERATION
1	RCS-002-2015	TECNICOS EN TELECOMUNICACIONES SAL & CABLE TELEVISIÓN DOBLE R S.A.	07/01/2015	HORIZONTAL
2	RCS-021-2015	EDIAY S.A. & REDES INALAMBRICAS DE COSTA RICA S.A.	04/02/2015	HORIZONTAL & CONGLOMERATE
3	RCS-022-2015	TRANSDATELECOM S.A. & ANDITEL INTERNATIONAL S.A.	04/02/2015	HORIZONTAL
4	RCS-055-2015	CABLE & WIRELESS PLC & COLUMBUS INTERNATIONAL INC.	10/04/2015	VERTICAL
5	RCS-112-2015	IBW COMUNICACIONES S.A. & GRUPO KONECTIVA LATAM S.A.	08/07/2015	HORIZONTAL
6	RCS-121-2015	TRANSDATELECOM S.A. & PRD INTERNACIONAL S.A.	15/07/2015	HORIZONTAL
7	RCS-149-2015	MILLICOM COSTA RICA S.A. & TELECABLE ECONOMICO TVE S.A.	19/08/2015	HORIZONTAL & CONGLOMERATE
8	RCS-175-2015	UFINET COSTA RICA S.A. & REDES INALAMBRICAS DE COSTA RICA S.A.	16/09/2015	HORIZONTAL
9	RCS-180-2015	CENTRAL DE RADIO CDR S.A. & COMPAÑIA NACIONAL DE RADIODIFUSIÓN LTDA.	16/09/2015	HORIZONTAL

2.2.2 Summary of significant cases.

2.2.2.1 COPROCOM

38. As previously indicated in the year 2015, the number of concentrations remained the same as in the previous year. The sectors studied correspond to the steel markets, sales of motorcycles, computer services, medical devices supplies, tourism and hotel sector, rice market and soaps. Actually the revision occurred in multiple markets, however none of the revised operations had greater effects to issue a conditioning and the effects were addressed towards the Costa Rican market.

39. Currently only it has been subject to conditioning the company Yara International ASA, in 2014; the company being shareholder ABOPAC requested the authorization to acquire the company OFD Holding Inc. and its subsidiaries in Costa Rica, Fertitec Costa Rica S.A. and the Costa Rican Coffee Company S.A. (CAFESA).

40. A result of the above, the YARA agent obtains a double condition, first, as a shareholder of ABOPAC and on the other hand, went on to have individual control also on one of its competitors in the market (CAFESA). That condition led to strengthen its substantial market power.

41. Another aspect to value is that given the existence of partners in common between the companies ABOPAC and CAFESA could facilitate their interaction. Valuing all these aspects the operation under a conditioning scheme was approved, however, the level of internal business relations, a number of drawbacks among some partners were given, so the parties decided that the best way to resolve the conflict was through the separation of interests, eliminating the positions of shareholder and competitor among others.

42. Thus, this year this body came to know by prior notice presented by the involved agents in the transaction with the purpose that the new proposal be approved in which it seemed that the market could be less concentrated, thus operating a balance in the exclusive distribution of brands which benefits the current market structure.

2.2.2.2 SUTEL

43. The mergers analysed were the following:

- 1) Acquisition of the stock of a company that provides cable television services at a regional level (*Cable Televisión Doble R S.A.*) by a company that provides cable television, VoIP, data transfer services at a regional level (*Técnicos en Telecomunicaciones S.A.L.*). The Council approved the merger (Decision N° RCS-002-2015, case file CN-1743-2014).
- 2) Joint venture between two companies (*EDIAY S.A. & Redes Inalámbricas de Costa Rica S.A. REICO*) in order to jointly tender in projects bid by *Fonatel* for the provision of fixed telephone and broadband internet access services in the southern region of the Country (*Pérez Zeledón, Buenos Aires, Coto Brus, Osa, Golfito, Corredores*) The Council approved the merger (Decision N° RCS-021-2015, case file CN-2412-2014).
- 3) Joint venture between two companies (*Transdatelecom S.A. & Anditel International AI S.A.*) so they can jointly tender in projects bid by *Fonatel* for the provision of fixed telephone and broadband internet access services in the southern region of the country (*Pérez Zeledón*) (Decision N° RCS-22-2015, case file CN-2490-2014).
- 4) Notification of the acquisition of *Cable & Wireless Communications PLC* (constituted under the laws of the United Kingdom) of *Columbus International Inc.* (constituted under the laws of Barbados). In the analysis it is determined that *Columbus International Inc.* through its company *Lazus Columbus S.A.S.* has operations in the country through the following companies *Columbus Networks Wholesale de Costa Rica S.A.* (formerly known as *Promitel Costa Rica S.A.*) y *Columbus Networks de Costa Rica S.R.L.* However since *Cable & Wireless Communications PLC* does not have directly or indirectly operations in the country the Council determines that the operation does not have to be notified for its approval just for its inscription in the National Telecommunications Registry. (Decision N° RCS-055-2015, case file CN-00632-2015).
- 5) Merger between a company that provides trunking, point-to-point and residential internet access services (*IBW Comunicaciones S.A.*) with a company that provides data transfer, internet access, point-to-point and VoIP services (*Grupo Konectiva Latam S.A.*). The Council approved the merger (Decision N° RCS-112-2015, case file CN-00861-2015)
- 6) Acquisition of 51% of the stock of a company that provides point-to-point, point-to-multipoint and internet access services (*PRD Internacional S.A.*) by a company that provides data transfer services, residential internet access, cable television, VoIP and IPTV (*Transdatelecom S.A.*) The Council filed the notification due to failure of the undertakings to comply with the requirements to notify a merger (Decision N° RCS-121-2015, case file CN-00476-2015).
- 7) Merger between a company that provides cable television, internet access, VoIP, data transfer, point-to-point services (*Millicom Costa Rica S.A.*) and a company that provides cable television, VoIP and internet access services (*Telecable Económico TVE S.A.*) The Council blocked this merger because it deemed that the *Millicom Costa Rica S.A.* would acquire market dominance that could lead to coordination between the undertakings in the relevant markets analyzed. The Council also considered that the commitments offered by the undertakings were not verifiable so they could not compensate the negative outcome of the proposed merger. (Decision N° RCS-149-2015, case file CN-02489-2014).
- 8) Merger between a company that provides data transfer services through its own fiber optic network (*Ufinet Costa Rica S.A.*) and a company that provides wholesale data transfer services

(*Redes Inalambricas de Costa Rica S.A. REICO*). The operation notify implies the acquisition of the stocks of REICO by UFINET but only involves the acquisition of the network of REICO and the wholesale clients, since the corporate clients will be assigned to a new company prior to the execution of this operation. The Council approved the merger (Decision N° RCS-175-2015, case file CN-01229-2015).

- 9) Merger between two radiobroadcasting companies, specifically the acquisition of *Compañía Nacional de Radiodifusión Ltda.* (97,9 FM) by *Central de Radios CDR S.A.* (93,5; 94,3; 95,1; 99,1; 101,1; 102,7; 103,5 in FM and 0,670; 0,730; 0,890; 0,980; 4,832 y 6,006 in AM). The Council consider that it does not have authority to review this merger, since the affected relevant markets are advertising and radio broadcasting content and sent the file to the Coprocom for its analysis. (Decision N° RCS-180-2015, case file CN-01534-2015).

3. The role of competition authorities in the formulation and implementation of other policies

3.1 COPROCOM

44. The Result of the intervention of the Authority on issues of law, the application of the Legislative Assembly was attended, for the Draft Law No. 19350 to be known, which intended to eliminate the free sale of medications and to authorize, on the other hand, the pharmaceutical recommendation and addressing minor symptoms.

45. In the opinion issued it was emphasized that by closing the possibility of freely selling the medications so basic and common as influenza drugs, medicines of the digestive system, which treat some diseases of the skin, to be sold freely in any commercial establishment in the country (supermarkets, grocery stores, little grocery stores, convenience stores and others), would set only two choices for consumers, one would force them to acquire privately in pharmacies legally constituted and authorized in the country and on other hand, there is a possibility to go to the public health system of the Costa Rican Social Security Fund (CCSS), which could restrict the existing options.

46. From the standpoint of competition, it was indicated that this project was contrary to the principles of competition and the pillar which protects freedom of trade and enterprise. The difference which operates between the current scheme of free sale and the possibilities with which the consumer has to purchase drugs in other commercial establishments which supply their needs for basic and fundamental demand to be covered and at the same time promotes the right of free access to health.

47. The current system of selling drugs promotes competition, forcing pharmacies to compete on price and variety of products, e.g., that these have to maintain a large stock of products to offer to the consumer. The motivations of the project are guided to avoid self-medication.

48. In another set of ideas, it should be noted that during 2015 around 409 officials and private subjects of both sectors of the country were trained. Such inductions obey to issues of promoting the competition culture, scope of regulations, considerations of collusive tendering, benefits of competition, technical assistance and signs to identify anticompetitive behavior.

49. In addition it has other views in most of the telecommunications, financial services, insurance, public procurement, medicines etc.

3.2 SUTEL

50. The SUTEL as a competition authority has not participated in the formulation and implementation of other policies.

4. Resources of competition authorities

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget (in your currency and USD):

4.1.1.1 COPROCOM

Year	Budget ⁶
2015	¢375.520.357 (\$688.358.76) ⁷
2014	¢402.898.000 (\$762.000)
2013	¢ 349.000.000 (Aprox. \$695.000)
2012	¢ 324.952.691 (Aprox. \$650.000)

51. It is important to note that the decrease in the budget of 2015 responds to changes in the Central Administration, because some of the directions of the Ministry of Economy did not have justified the increases in the budget, since it did not have a scheme of needs to prove the urgency to maintain or increase the amount.

52. There is the need to add that the Competition Directorate and the Commission has additional resources from MEIC's budget to pay the lease of its offices and related accounts (e.g. electricity, water, private security, etc.). Such payments are not included in the Annual Commission budget.

4.1.1.2 SUTEL

53. The annual budget of SUTEL for 2015 was US\$43.814.034,36 (¢23.643.805.500,00) of that amount the budget of the General Directorate of Markets was US\$3.419.180,20 (¢1.845.126.378,40)⁸

4.1.2 Number of employees (person-years):

4.1.2.1 COPROCOM

Period 2012-2014	Number of employees	Members of Coprocom ⁹
Director	1	
Economists	6	5
Attorneys at Law	6	4

⁶ COPROCOM counts with additional resources from MEIC's budget to pay for the lease of its offices and related bills (e.g. electricity, water, private security, etc.). Such payments are not included in COPROCOM's annual budget.

⁷ According to the January 2015 exchange rate corresponding to ¢545.53 colones

⁸ The total budget it is up to USD 43.8 million of which USD 23.09 million correspond to the National Telecommunications Fund, in accordance with the provisions of the letter DFOE-IFR-0753 issued by the Controller General of the Republic in December 5, 2014.

⁹ Commissioners do not work full-time, and they meet in regular weekly sessions for which they are paid for their attendance.

Period 2012-2014	Number of employees	Members of Coprocom⁹
Director	1	
Other professionals	0	0
Support Group	3	0
Total of members	16	9

4.1.2.2 SUTEL

Period 2015	Number of employees	Member of Council
Economists	6	
Attorneys at Law	7	
Support Group	0	
Engineers	7	3
Accountants	2	
Finance	1	
Statistic	2	
Total of Members	25	3

54. In 2015, the SUTEL had 128 employees, of which 25 are from the General Directorate of Markets and 6 from the competition affairs bureau.¹⁰

4.2 *Human resources (person-years) applied to:*

- SUTEL

55. According to the institutional design, the General Directorate of Market thru its competition affairs bureau does all these actions, and allocates additional resources according with specific needs.

4.3 *Period covered by the above information*

The above information is from the period of January to December of 2015.

5. **Summaries of or references to new reports and studies on competition policy issues**

5.1 *COPROCOM*

56. In December 2015, as a result of the collaboration of the Prosperity Fund of the Foreign Affairs Ministry and the Commonwealth Office of the Nations United, a guide for market research studies proposal was received, prepared under international standards dictated by the OECD, being the objective of the Commission to obtain a tool that provides guidelines essential for the preparation of such studies in the country and start its implementation and application in ordinary work.

5.2 *SUTEL*

57. There are no new reports and studies on competition policy issues.

¹⁰ It is worth to mention that not all the resources of the General Directorate of Markets are devoted to competition matters.