

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Costa Rica****-- 2018 --**

This report is submitted by Costa Rica to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Costa Rica

Executive Summary

1. Law 7472 for the Promotion of Competition and Effective Consumer Protection (hereinafter referred to as Law 7472) created the Costa Rican competition authority: the Commission to Promote Competition (hereinafter, COPROCOM), with powers to apply regulations related to competition. Since its approval in 1994, this Law remained unchanged until the end of 2012 when, through Law 9072, a reform was introduced, granting COPROCOM additional investigative powers, such as the power to carry out inspections; the possibility for economic agents to require early termination of an investigation on anti-competitive practices; and the establishment of a merger notification regime.

2. Until 2008, the telecommunications sector in Costa Rica was exempt from the competition provisions established in Law 7472. Upon ratification of the Free Trade Agreement with the United States in October 2007, in June 2008, the Congress of Costa Rica passed the General Law on Telecommunications (hereinafter referred to as Law 8642). This Law explicitly defined that the operation of telecommunications networks and services would be subject to a system of sectoral competition governed by said law, and that the standards set forth in Law 7472 would be supplementary. Since then, the Telecommunications Regulatory Authority (hereinafter referred to as SUTEL) has the authority to enforce the rules relating to competition in the telecommunications sector.

3. In order to ensure consistency in the application of the competition law in Costa Rica, articles 55 and 56 of the Law 8642 define the requirements of communication and cooperation between SUTEL and COPROCOM.

4. The main objectives of COPROCOM and SUTEL are to promote effective competition and to defend the proper functioning of the markets, understanding that, with competition, more efficient markets can be reached and there is greater consumer welfare.

5. In 2018, a series of important advances in competition policy occurred. Regarding the enforcement of competition law, the national competition authority focused its efforts on priority sectors for consumers, such as the pharmaceutical industry and the fight against bid-rigging in the public sector. Likewise, a series of studies were issued on priority sectors for the country's economy in which there is limited competition. The aim is to issue recommendations on the promotion of competition in said sectors. Finally, progress was achieved in preparing a new bill of law to reform the regulatory framework of competition in the country. This new bill of law is based on international best practices in the area, considering the observations previously received in the process of public consultation, as well as the recommendations stated by the Organization for Economic Cooperation and Development (hereinafter OECD).

6. This report summarizes recent developments in competition policy, enforcement of the competition law, promotion activities, as well as other advances in Costa Rica during 2018. Some of the most prominent advances are summarized in the following paragraphs.

7. In 2018, nine investigations were initiated for alleged infringement of the competition law. Most of them related to relative monopolistic practices (unilateral conducts and vertical agreements) in different sectors. Likewise, an important case in the

pharmaceutical market was sanctioned for relative monopolistic practices, in which one of the highest fines in the history of the Authority was imposed¹.

8. In terms of absolute monopolistic practices (cartels), the national competition authority focused its efforts on the investigation of practices related to the alleged manipulation of bids in public procurement. These investigations involved the markets of office furniture and equipment.

9. Regarding mergers, COPROCOM and SUTEL evaluated respectively 32 and 6 operations in 2018. The majority of these transactions were approved by COPROCOM. Only two mergers were conditioned, and one merger was rejected in the supermarket sector.

10. Regarding advocacy activities, Costa Rica has been especially active in issuing opinions and market studies. COPROCOM issued 5 market studies: alcohol distillation, the postal services, fuel retail, technical vehicle inspection and passenger transportation. These assessments included an in-depth economic and legal analysis of each sector. SUTEL also published four studies assessing competition in the markets of business connectivity, access to international broadband capacity, dedicated wholesale lines and access and origination in a mobile network.

11. Also, COPROCOM organized two training courses with the cooperation of the Federal Trade Commission of the United States and the *Conselho Administrativo de Defesa Econômica of Brazil*. These training activities were fundamental to strengthen the legal and economic analysis of both authorities. Other public institutions such as the Office of the Attorney General of the Republic, the Judiciary Branch, as well as representatives of the private sector such as chambers, associations and companies also participated in these activities.

12. COPROCOM and SUTEL are committed to increasing their enforcement activities and continuing to be active in the promotion of competition.

13. As part of its accession process to become a member of the OECD, Costa Rica is currently working on a series of reforms to Law 7472 and Law 8642, based on the recommendations included in the 2014 Peer Review on Competition Law and Policy by the OECD and the Inter-American Development Bank (hereinafter IDB). The main purpose of the bill of law is to align Costa Rica's competition law with international best practices.

1. PROPOSED OR ADOPTED CHANGES TO COMPETITION POLICIES AND LAWS

1.1. Summary on the new legal provisions of competition law and related legislation.

14. The Costa Rican competition authorities drafted a new proposal to reform the competition law, which follows the recommendations established in the Peer Review on Competition Law and Policy conducted in 2014 by the OECD and the IDB, as well as the international best practices. The main objective of the proposal is to strengthen the national and the sectoral competition authorities and provide them with an updated regulatory framework.

¹ This resolution is not yet final because is pending to decide upon a recourse for reconsideration.

15. The new proposal went through an extensive process of public consultation, which included visits to business chambers; academic discussion forums with professionals specialized in competition law, organized along with the Academy of Central America²; training programs, in coordination with the IDB, for legislative advisors, and which concluded with a formal public consultation by the Government in the months of November and December 2018³.

16. The bill of law was sent to the Legislative Assembly on March 13, 2019 and it is expected to be approved during the second semester of 2019.

1.1.1. Substantial changes in the proposed competition bill

Extension of the scope of application of the competition law.

17. The scope of the competition law is extended in the new proposal, not leaving any specific sector exempt from its application. This means that only certain specific acts, expressly authorized by special laws, are excluded from the application of the competition law. However, the bill of law establishes that COPROCOM may conduct market studies aimed at analyzing and recommending remedies to promote competitions in such sectors.

18. In accordance with this new definition, there are only five specific sectors in which certain acts, duly authorized by special laws, will be exempt from the scope of the competition law. These sectors are the sugar cane industry, the rice market, the coffee industry, maritime transport, and professional associations.

Independence

19. This bill of law contemplates the strengthening of COPROCOM by granting it administrative, budgetary and functional independence. In addition, it confers instrumental legal personality to engage in contractual activity; manage its resources and assets; and execute contracts and agreements with public and private entities, both national and international. This will allow it to perform the duties, attributions and powers granted by the legal system.

20. There are different mechanisms proposed in the bill to guarantee the independence of the competition agency. Such mechanisms include the following:

- Only courts of law can review and annul COPROCOM's decisions.
- A mechanism to guarantee that COPROCOM's budget cannot be affected by short-term political decisions.
- The technical staff and the commissioners who work for the commission will be paid with reference to similar bodies, such as SUTEL.
- Appointment of members of COPROCOM by means of a public contest on qualifications, and ratification of the Legislative Assembly.
- A staggered appointment of COPROCOM members.

² The Academy of Central America (Academia de Centroamérica) is a private, non-profit research center based in Costa Rica. It was founded in 1969, and its interest focuses on the promotion of research in the areas of social sciences, particularly on economic and social development, as well as policy analysis and formulation.

³ Each one of the remarks received was answered and published. The information can be found in the following link: <https://www.meic.go.cr/meic/documentos/69q6zw2mr/MatrizComentariosPLCompe140319.pdf>

- Members of COPROCOM can only be dismissed for justified reasons established by law. Due process must be followed to dismiss a member of the Commission, which shall be done by the Government Council.
- COPROCOM will be able to manage and administer its resources and budget, as well as the modifications that it requires.

Increase in the budget of the competition authority.

21. To guarantee that COPROCOM has the necessary financial resources to effectively enforce competition law, the proposal expressly indicates a minimum budget that the Government must allocate. The proposed amount significantly increases COPROCOM's resources, bringing it closer to the resources available to other regulatory agencies in Costa Rica, as well as to international competition authorities. The bill sets forth an annual budget for COPROCOM of 2,368,000,000 *colones* (equivalent to US\$ 3,912,110 at the current exchange rate), which represents an increase of 379% with respect to COPROCOM's current budget.

Appointment of full-time COPROCOM commissioners.

22. The proposal replaces the current system of appointment. Specifically, it establishes that the Commission will have three full time members, including at least one lawyer and one economist. Likewise, it is established that the Commission shall have two alternate members, which guarantees the structural quorum of the Commission, and ensures continuity in the decision-making tasks.

Improvement of the procedure to conduct investigations and impose sanctions.

23. The bill of law replaces the current general procedure for investigation of anticompetitive practices with a procedure designed specifically for the complexities and specifications of this type of investigations. The special procedure establishes three independent stages and, for greater transparency and legal certainty, a separation of functions among the officials that participate in each stage. The three stages ensure due process and the right of defense. It should be noted that this procedure will be applied by both competition authorities.

24. The procedure introduces a leniency program that grants exceptions or reductions of fines to the agents that collaborate with the authorities in the investigation of absolute monopolistic practices. The leniency program will allow competition authorities to improve the detection of cartels.

25. In addition, the procedure introduces mechanisms that provide companies the possibility of requesting the early termination of a procedure. The three mechanisms of early termination are: termination due to evident inadmissibility, early termination with acknowledgment of infringement, and early termination with an offer of commitments.

Classification of practices and effective sanctions to deter illegal conducts and to foster the cooperation of economic agents with the competition authority.

26. The bill increases the number of practices that the competition authority can sanction, and substantially increases the fines for each type of infringement. The bill of law classifies infringements as minor, serious and very serious. The fines will be calculated as a maximum percentage on the volume of sales. The fines are established as a maximum of 3% for minor infringements, 5% for serious infringements and 10% for very serious

infringements. Moreover, for individuals who participate in monopolistic practices or illicit mergers establish a maximum fine of up to six hundred and eighty base wages, which is equivalent to US\$501,265.

Modification in the definition of merger and the standard of analysis of mergers.

27. Regarding the merger control regime, the bill establishes a two-stage procedure which will allow the authority expeditiously to approve transactions that do not generate anti-competitive concerns, and it prohibits the possibility of notifying a merger after the execution of the transaction. A new standard for the assessment of mergers is established. This standard follows international recommendations and emphasizes a focus on the effects of the transaction. Finally, thresholds are modified to allow a more efficient use of the authority's resources and to avoid analyzing transactions without anti-competitive effects in the market.

Strengthening the powers of the competition authority to promote competition.

28. The bill of law reinforces the powers of the competition authority to promote the elimination or modification of regulations that establish barriers to competition. The competition authorities shall have sufficient powers to issue opinions and recommendations, guidelines and market studies. They shall also be able to carry out training activities and the promotion of pro-competitive legal frameworks. Further, they shall have the authority to establish cooperation agreements with public or private, national or international entities.

Authority to carry out market studies.

29. The bill of law strengthens the powers of the competition authorities to carry out market studies efficiently, giving them enough powers to request information from both public and private entities. The authorities will be able to make all the recommendations they deem necessary in these studies. In accordance with international best practices, the recommendations issued in a market study will not have binding effects, but public entities that deviate from such recommendations must inform the corresponding competition authority about the reasons why they will not implement the recommendations.

Transfer of the power to authorize mergers in the financial sector

30. The bill of law gives the competition authority the power to authorize mergers in the financial sector. However, it is recognized that any transactions which may imply a prudential risk to the financial system shall be exclusively analyzed by the corresponding Superintendence of the Financial System. This aims to protect and mitigate risks to the solvency, soundness and stability of the entities or of the financial system.

1.2. Other relevant measures, including new guidelines.

31. Following the recommendations of the OECD, COPROCOM has advanced in analyzing a methodology and the criteria used to impose fines: "Methodological Guide for the Imposition of Sanctions by Coprocom".

32. Likewise, at the end of 2018, the national competition authority updated its "Guide for Administrative Procurement and Competition". It now includes recent criteria issued by COPROCOM on the use of framework agreements for the purchase of goods and

services, promoted by a Government directive that is now revoked, which gave unjustified advantages to public companies in procurement procedures.

1.3. Government proposals for new legislation.

33. In addition to the bill of law explained in detail in the previous section, there are no other legal provisions to report.

2. ENFORCEMENT OF COMPETITION LAWS AND POLICIES

2.1. Actions against anti-competitive practices.

2.1.1. Cartels and agreements.

34. In 2018, important activities to enforce the competition law were initiated. Regarding absolute monopolistic practices, COPROCOM initiated a preliminary investigation into the alleged manipulation of bids in public tenders for medications. Also, SUTEL initiated a preliminary investigation into alleged illegal agreements between competitors, with the objective of allocating territories in the markets for fixed broadband internet access and subscription-based television.

2.1.2. Unilateral conducts and vertical agreements.

35. In 2018 the competition authorities decided on some relevant cases and opened new ones.

36. COPROCOM conducted four preliminary investigations for alleged infringement of competition law. Three of them are related to public procurement, including one referred to a guideline issued to all the institutions of the Central Government, which favored hiring other public entities in detriment of private sector participation, thereby affecting competition and efficiency in public spending. The guideline was revoked while the investigation was being carried out. In addition, COPROCOM issued a decision addressed to the authorities in order to advocate for the principle of competition to guide public procurement processes, as established in the regulations.

37. Although a complaint for alleged relative monopolistic practice was filed against the Government for allegedly having favored their companies. COPROCOM rejected the complaint and issued an opinion to the Government regarding the consequences of violating the competitive neutrality principle.

38. Also, an investigation was conducted regarding alleged relative monopolistic practices in purchasing of office furniture, related with the award to another company of the bid to construct a public building.

39. A fourth investigation was carried out in the packaged bread market.

40. Finally, an investigation related to the sale of new vehicles concluded with COPROCOM's decision to open an administrative procedure against *Asociación de Importadores de Vehículos y Maquinaria (AIVEMA)*, for alleged infringement of Law No. 7472.

41. SUTEL concluded four preliminary investigations in 2018, most of them related to relative monopolistic practices: one in the mobile market and the others in the markets for

broadband internet access and subscription-based television. Furthermore, an administrative proceeding against the Costa Rican Institute of Electricity was closed for alleged violation of Law 8642, specifically for predatory pricing and margin squeeze in the mobile market. No fines were imposed in this case.

42. SUTEL opened two preliminary investigations for alleged infringement of the competition law. The first, for alleged vertical restraint, and the second for discrimination and abusive pricing, both investigations in the markets of broadband internet access and subscription-based television.

43. There were other minor cases filed by both authorities without any specific actions.

2.1.3. Summary of Activities

44. The table below summarizes the enforcement activities of both competition authorities in 2018.

Table 1. Actions to Enforce the Competition Law by COPROCOM and SUTEL 2018

COPROCOM				
Preliminary Investigations				
File	Markets	Practices	Companies	Decision
071-17-D	Packaged Bread	Relative monopolistic practices (price discrimination)	Herbavi del Pacifico S.A., Bimbo de Costa Rica S.A.	Vote 29-2018
080-16-D	Acquisition of goods and services by the Government	Relative monopolistic practices	Costa Rican Union of Chambers and Associations of the Private Business Sector (UCCAEP)	Vote 73-2018 and OP-07-18-C
033-17-C	Office furniture	Relative monopolistic practices	Paneltec and Trust of Banco de Costa Rica	Agreement 16 of Session 08-18
06-18-C	Office furniture	Absolute monopolistic practice (bid-rigging in tenders)	Ministry of Finance	Vote 92-2018
026-18-IO	Sale of vehicles	Relative monopolistic practices	AIVEMA and its Board of Directors	Agreement 6, paragraphs 1 and 2 of article 6 of ordinary session No. 11-2018
Administrative Procedures				
15-12-D	Pharmaceuticals	Relative monopolistic practices (margin squeeze)	Cefa Central Farmacéutica S.A. and others	Vote 91-2018
SUTEL				
Preliminary Investigations				
File	Markets	Practices	Companies	Decision
I0053-STT-MOT-PM-00618-2017	Mobile telecommunications market	Relative monopolistic practices (exclusive distribution)	Costa Rican Institute of Electricity	RCS-055-2018
M0391-STT-MOT-PM-01493-2017	Broadband internet access market and subscription-based television service market	Relative monopolistic practices (refusal to deal)	Millicom Cable Costa Rica S.A. and Condominio Vive Tibás	RCS-234-2018

T0062-STT-MOT-PM-01494-2017	Broadband internet access market and subscription-based television service market	Relative monopolistic practices (exclusivity agreement)	Televisora de Costa Rica S.A. and Condominio Vista Centro	RCS-011-2018
T0062-STT-MOT-PM-01566-2017	Broadband internet access market and subscription-based television service market	Relative monopolistic practices (exclusivity agreement)	Televisora de Costa Rica S.A. and Condominio Praga	RCS-367-2018
Administrative Proceedings				
C0059-STT-MOT-OT-00151-2012	Mobile telecommunications market	Relative monopolistic practices (predatory pricing and margin squeeze)	Costa Rican Institute of Electricity	RCS-144-2018

2.1.4. Judicial Review

45. The following table summarizes judicial reviews on competition decisions.

Table 2. Judicial Reviews on Competition Decisions Issued by COPROCOM 2018

COPROCOM				
Judicial Decision	Administrative Decision	Practices	Companies	Judicial Review
112-18-2018-V of 15:05 hours of December 14, 2018 Contentious-Administrative Court, Fourth Section	Vote 33-2013	Relative monopolistic practices (vertical boycott)	Agencia Datsun, Veinsa and Euro Autos de Centroamérica S.A.	The court of first instance partially annulled Vote 033-2013, considering that the authority had violated the principles of due process and the right of defense.
603-F-S1-2018 of 14:00 hours on June 28, 2018 of the III Chamber	Article 10 Session 17-2009	Absolute practices (price fixing)	Operadora de Planes de Pensiones del Banco Popular, IBP Pensiones Complementarias SA, BCR Operadora de Planes de Pensiones, Vida Plena Operadora de Planes de Pensiones Complementarias	The court of second instance rejected the appeal filed by the Office of the Attorney General of the Republic, confirming the ruling of the court of first instance which had declared Vote 17-2009 void.
00194-2018 of March 8, 2018 of I Chamber	Vote 13-2012	Absolute practices (bid-rigging)	Ericson of Costa Rica, Nokia Siemens Networks CR, Continex S.A. (Samsung) ZTC Corp and Huawei Technologies CR	The court of second instance rejected the appeal filed by Huawei Technologies CR, confirming that there was sufficient evidence for COPROCOM to sanction the absolute practice.

2.2. Mergers and Acquisitions

2.2.1. Statistics on the number, size and type of mergers notified according to the competition laws

46. In 2018, COPROCOM analyzed 32 merger notifications: 29 were approved without conditions, 2 were authorized with conditions, and 1 was banned. SUTEL analyzed 6 merger notifications: 3 were approved without conditions, and 3 were authorized with conditions. No merger operations were banned.

47. Regarding the control of mergers, the following cases were closed in 2018.

Table 3. Mergers and Acquisitions Reviewed by COPROCOM and SUTEL 2018

COPROCOM			
File	Market	Parties	Vote
001-18-CE	Clinical laboratories	Labiclin /3-101675402	Vote 09-2018, February 13
002-18-CE	Application of home services	Capitales Moonriver/Go Pato	Vote 10-2018, February 13
003-18-CE	Financial services	Davivienda and Soluciones de Pago	Vote 39-2018, June 19
004-18-CE	Financial services	Davivienda and Recuperadora de Crédito	Vote 40-2018, June 19
005-18-CE	Financial services	Davivienda and POM Cobranzas	Vote 41-2018, June 19
007-18-CE	Cigarettes	Phillip Morris/ Brands Sarl	Vote 11-2018, February 17
008-18-CE	Plastic packaging and others	Berry and Clopay	Vote 43-2018, June 26
011-18-CE	Mass consumption products	Disal and New Boston	Vote 22-2018, April 10
013-18-CE	Electrical products	Abb and General Electric	Vote 24-2018, April 17
015-18-CE	Auto parts	KKR and LS Auto	Vote 23-2018, April 17
017-18-CE	Hotels	Talima Aventure and Cf Hotels	Vote 26-2018, April 24
020-18-CE	Plastics	Plastiche-Bamberger	Vote 34-2018, May 29
030-18-CE	Airport services	Vinci Airports and Awcr	Vote 38-2018, June 19
031-18-CE	Air conditioners	Ir and Mitsubishi	Vote 35-2018, May 29
036-18-CE	Fruits and vegetables	Total Produce and Df Holding	Vote 47-2018, July 10
040-18-CE	Leasing services	Davivienda and Kineret	Vote 54-2018, August 21
041-18-CE	Cables	Prysmen and Alisea	Vote 50-2018, August 01
042-18-CE	Multi-assistance services	Coinca	Vote 51-2018, August 01
048-18-CE	Fraud classification services	Trans Union and Fraud Force	Vote 53-2018, August 14
049-18-CE	Leasing services	Davivienda and Kineret	Vote 55-2018, August 21
051-18-CE	Butters and margarins	KKR and Unilever	Vote 69-2018, September 25

053-18-CE	Casinos	Blackstone and Cirsa	Vote 68-2018, September 25
056-18-CE	Drilling tools	The Weir Group Plc and Esco	Vote 052-2018, August 14
057-18-CE	Supermarkets	Gessa and Corporacion Supermercados Unidos	Vote 93-2018, December 04
059-18-CE	Agricultural protection products	UPL Corporation Limited and Plataform Speciality Products Corporation	Vote 66-2018, September 18
062-18-CE	Airport services	Grupo CCR and Aeris Holding/Airport Worldwide	Vote 67-2018, September 18
066-18-CE	Assignment of receivables	Davivienda and POM Gestores	Vote 75-2018, September 18
067-18-CE	Packing materials	KKR and Petainer Topco Limited	Vote 77-2018, October 09 2018
068-18-CE	Healthcare products	Proter & Gamble and Merck	Vote 90-2018, December 04
071-18-CE	Lubricants	Metalub	Vote 081-2018, October 23
072-18-CE	Hotels	Hospitality Lapi	Vote 082-2018, October 23
075-18-CE	Chemical products and plastic products	Ravago Chemicals S.A Oln Chemicals B.V. and Richema B.V.	Vote 85-2018, November 15

SUTEL

File	Market	Parties	Vote
T0062-STT-MOT-CN-00347-2018	Retail access to broadband internet, subscription-based television services, business connectivity and wholesale broadband access services.	LBT Adquisitions S.A. and Televisora de Costa Rica S.A.	RCS-231-2018, June 22
T0046-STT-MOT-CN-00612-2018	Wholesale service of dedicated lines.	Telecable S.A. and Técnicos en Telecomunicaciones S.A.	RCS-230-2018, June 22
M0391-STT-MOT-CN-00945-2018	Retail access to broadband internet and subscription-based television services.	Millicom Cable Costa Rica S.A. and Cable Zarcero S.A.	RCS-285-2018, August 16, 2018
M0391-STT-MOT-CN-00946-2018	Retail access to broadband internet and subscription-based television services.	Millicom Cable Costa Rica S.A. and Cable Televisión Doble R S.A.	RCS-284-2018, August 16 2018
U0047-STT-MOT-CN-01447-2018	Wholesale service of dedicated lines and access to infrastructure.	Ufinet Costa Rica S.A. and Super Wireless T.D.T. S.A.	RCS-381-2018, November 28 2018
T0053-STT-MOT-CN-1651-2018	Retail access to broadband internet and subscription-based television services.	Telecable S.A. and Cable Costa S.A.	RCS-406-2018, December 19 2018

2.2.2. Summary of important cases

Metalco-Abonos Agro

48. COPROCOM concluded, by Vote 016-2018, that the economic merger transaction notified, between the companies METALCO S.A. and ACEROS ABONOS AGRO S.A., had negative unilateral anti-competitive and portfolio effects derived from the economic merger in the industry of wholesale distribution of: 1. Roofs and accessories, 2. Profiles and piping, 3. Rods, plates and corner pieces, 4. Beams, 5. Plain sheets and 6. Steel wires, within Costa Rican territory. The most concerning effects of the operation were in the roof and accessories markets, as well as in profiles and pipes, for the following reasons: high market shares; scarce possibilities for competitors to increase supply if the price is increased; possibility of preventing the expansion of its competitors; elimination of a

competitor; strong or potential competitor; and increase in the purchasing power of the merged companies. In view of the foregoing, Vote 45-2018 established the conditions, as well as the provisions that were considered necessary to countervail the negative effects of the operation under analysis.

Merck KGaA - Procter & Gamble Company

49. Through Vote 090-2018, COPROCOM approved the economic merger transaction notified between the companies Procter & Gamble Company, ("P&G") and Merck KGaA, ("MERCK"). The transaction consisted in P&G acquiring full control over the Merck division called "**Consumer Health Business**." The market affected by the transaction was determined as the group of medications that do not require medical prescription, also known as "*Over The Counter Products*." Specifically, the operation refers to Merck's Consumer Health Care segment. This division mainly includes vitamins, products for colds, painkillers, digestive products, and others. Costa Rica, as well as other countries considered that Merck's merger of "Consumer Health Business" did not present adverse effects for competition.

Walmart-Gessa

50. Through Vote 093-2018, COPROCOM concluded that the economic merger transaction notified between the companies CSU and GESSA had negative, anti-competitive effects, mainly in three aspects: First, an increase in the substantial power that CSU already has in the assessed markets. Second, the possibility of increasing coordination among agents, as a result of the change in market structure. Finally, a weakening of market response and damage to competition as a result of the significant loss of an active economic agent. In view of the above, COPROCOM denied the merger, as it considered that possible conditions of structure or conduct could not prevent, diminish or counteract the anti-competitive effects associated with the potential merger.

CABLETICA-LIBERTY

51. In 2018, Liberty Latin America Ltd. gained control of CABLETICA S.A., the second largest fixed operator in Costa Rica, with operations in the retail markets for broadband access, paid television, IP telephony and other commercial and wholesale services. Prior to the transaction, Liberty Latin America Ltd. had already acquired two companies in Costa Rica owned by Cable & Wireless Communications: Columbus Networks Wholesale de Costa Rica S.A. and Columbus Networks de Costa Rica S.R.L. SUTEL authorized the notified merger without any condition, considering that CABLETICA and the Columbus Networks companies operated at different levels of the chain. The main effects of the operation were of a vertical nature, which did not have the potential to affect competition.

3. THE ROLE OF COMPETITION AUTHORITIES IN DEVELOPING AND ENFORCING OTHER POLICIES, E.G. REGULATORY REFORM, COMMERCIAL AND INDUSTRIAL POLICIES.

3.1. Opinions on Competition

52. COPROCOM and SUTEL issued several opinions on bills, most of which were requested by the proponent of the bill. In each case, COPROCOM and SUTEL analyzed whether the proposal suggested had the potential to restrain competition. The opinions of COPROCOM and SUTEL are not binding for those who consult the authorities, or for public administration.

53. The following opinions were issued in 2018.

Table 4. Opinions on Draft Regulations and Bills Issued by COPROCOM and SUTEL. 2018

COPROCOM			
Number	Subject		Result
OP-003-18	Consultation on the Amendment to the Regulation under Article 12, Annex 3 of Law 7017, the "Law on Incentives for Industrial Production, Annex A of the Central American Import Tariff"		COPROCOM ruled against the project, and recommended revising the decree, as it violated competition principles, free concurrence, efficiency in purchases, national treatment of products, among others, widely supported by national jurisprudence. Additionally, the bill established a new procedure that required the Administration to invest in verifying the veracity of what the companies declare, which was considered as a cost for the users.
OP-005-18	Decision on the implications of applying a safeguard measure to imports of steel bars		COPROCOM issued an opinion against a safeguard measure, given that it would have consequences such as: the elimination of competition from third market players and an increase in the price of the national product. Also, an impact on the cost of construction.
OP-023-18	Opinion request concerning the bill entitled: "Law on Fuel (Law to Promote the Elimination of the Use of Fossil Fuels in Costa Rica and Declare the National Territory Free of Exploration and Exploitation of Oil and Gas)"		The bill in question was mainly about core issues of environment and energy, which were not related to the proceedings on competition and free concurrence in the market; no opinion was issued on the merits.
OP-024-18	Opinion request concerning the bill entitled "Law to Lower the Price of Rice".		COPROCOM issued an opinion in favor of the bill, which was consistent with the criteria issued for more than 20 years. Supports the initiative the promotion of competition in rice market, both at the wholesale and retail level. The Bill continues under discussion in the Legislative Assembly.
OP-025-18	Report on Bill No. 20404, Law on the National Statistics System.		COPROCOM issued a favorable opinion given that the bill in question is fundamentally about strengthening the National Statistical System, which is not a matter related to the process of competition. The Bill continues under discussion in the Legislative Assembly.
SUTEL			
Number	Subject		Result
026-034-2018	Central American Regulation on Competition		SUTEL issued a statement indicating that the regional body should be granted greater independence, so it should not depend on nor respond directly to the Central American Council of Ministers. Adjustments were made to the proposal of the text to recognize what was requested by SUTEL.
001-035-2018	Bill of Law File No. 19.932 "Amendment of Law 8642" (Blocking of mobile calls in the penitentiary facilities)		SUTEL issued an opinion against this, considering that it could be discriminatory against some market agents (given the sanctions that could be imposed); however, the bill was approved.

3.2. Analysis of the Level of Competition.

54. In 2018, SUTEL continued working on the analysis of the level of competition in the telecommunications market, following the methodology issued by the SUTEL Council and published in the Official Gazette on June 1, 2015.

55. Studies were carried out in four telecommunications markets, which allowed SUTEL to eliminate price controls in the following markets:

- Wholesale mobile-network access market (RCS-040-2018).
- Retail business connectivity market (RCS-266-2018).
- Wholesale market of access to international exit capacity (RCS-297-2018).
- Wholesale dedicated line market (RCS-339-2018).

4. RESOURCES OF COMPETITION AUTHORITIES

4.1. General Resources (current numbers and change from the previous year):

4.1.1. Annual budget (in their currency and USD)

COPROCOM

56. The annual budget of COPROCOM for 2018 was US \$ 851,744.47 (equivalent to 494,150,137 *colones*).

SUTEL

57. The annual budget of SUTEL for 2018 was US \$ 20,031,553.09 (equivalent to 11,890,128,967.63 Costa Rican *colones*). Of that amount, the budget of the General Directorate of Markets, which is responsible for the area of competition, was US \$ 2,600,598.62 (equivalent to 1,543,637,358.49 Costa Rican *colones*).

4.1.2. Number of employees (person-years):

58. In 2018, COPROCOM was staffed with 19 people: 9 lawyers, 7 economists, 1 computer engineer, 1 criminologist, all directly related to competition matters. Additionally, there was 1 administrative support person.

59. On the other hand, in 2018 SUTEL was staffed with 131 people: 27 working in the General Directorate of Markets, and 6 directly in the area of competition, of which 3 are lawyers and 3 are economists.

4.1.3. Human resources (person-year) applied to execution against anti-competitive practices, review and compliance of mergers, defense efforts.

60. In the case of COPROCOM, there are 4 people engaged in enforcement of the law; 6 in the analysis of mergers; and 7 people in promotion and research.

61. In the case of SUTEL, the division of personnel between these areas is not entirely applicable. Although its officers have some degree of specialization, personnel in the competition area work both in cases of enforcement of competition and in cases of mergers,

as well as issues of advocacy. It is important to note that the General Directorate of Markets assigns additional human resources to the area of competition according to specific needs.

4.2. Period covered by the above information.

62. The above information covers actions carried out from January to December 2018.

5. SUMMARIES OR REFERENCES TO NEW REPORTS AND STUDIES ON COMPETITION POLICY ISSUES

5.1. Market Studies

63. COPROCOM and SUTEL also carried out other reports and market analysis. These reports aim to achieve more competitive and efficient markets. In addition, it is considered that other public entities could consider some of the recommendations included in said reports to promote competition.

64. In 2018, COPROCOM completed several analyses in different relevant sectors, which are summarized in the following Table.

Table 5. Market Studies Issued by COPROCOM. 2018

Number	Market	Main Conclusions	Recommendations
OP 002-18	Opinion regarding the Study on the Monopoly of Alcohol Production in Costa Rica.	1- The monopoly over alcohol harms domestic liquor producers, placing them in a disadvantageous situation, not only with FANAL, but also with foreign liquor distributors. Requiring domestic producers to buy inputs from FANAL, which has higher prices, makes local producers less competitive. 2- The objectives that justified the establishment of a monopoly in the production of alcohol are no longer relevant. 3- There are no reasons to justify maintaining the alcohol monopoly.	The objectives that led to justify the establishment of a monopoly in the production of alcohol and liquor in the country have been achieved but have lost all current validity. The damage this situation has caused to the country's economy and development is clear. Therefore, we recommend that the corresponding authorities carry out the necessary steps to repeal the rules that establish said monopoly within a minimum, peremptory time period. Likewise, we encourage the Executive and Legislative Branch to create the conditions that allow an effective competition in the production of alcohol and liquors in the country, in order to guarantee the greatest number of actors, which will result in a greater number of options in terms of quality and price, both for the industry and for consumers, all in a more competitive national industry.
OP-008-18	Opinion concerning the regulation of the Costa Rican postal sector.	1- All postal services, including the universal postal service, which is legally offered only by Correos de Costa Rica S.A., are currently being provided under conditions of competition. 2- The model adopted by the country has not been properly applied, and it affects Correos de Costa Rica S.A., as it is the only one that pays the fees stipulated by law and does not receive any transfer from	The model adopted by many countries to liberalize postal services, would be the most convenient for the country: on the one hand, it allows adapting the regulations to the reality of the market, and on the other, it gives greater freedom to the state-owned company in offering its services. Technological competition has provided substitutes and, in general, has reduced the demand for correspondence of letters: specifically, for the products

		<p>the Government for the provision of the service. 3- The model adopted by many countries to liberalize postal services would be the most convenient for Costa Rica. 4- Currently, in this sector only Correos de Costa Rica S.A. and the provision of the universal postal services are excluded from the enforcement of competition regulations.</p>	<p>covered by the Universal Postal Service. Furthermore, given the obvious substitution of traditional postal services by new services enabled by current technological changes, it would be good to explore how the guiding principles in the General Law on Telecommunications (universality, user benefit, and solidarity) - which are fully consistent with the regulations governing the postal sector- help provide efficient universal postal services.</p>
OP-009-18	Opinion on the gas-station sector.	<p>1- The retail market is excessively regulated, apparently justified in the existence of a monopoly in the import and wholesale distribution of fuels. 2- This sector is regulated, but it is not exempt from the enforcement of the competition law.</p>	<p>It is appropriate to correct the regulatory model in order to guarantee a cost structure linked to the relative size of the demand in each region, and not an average price applicable to all gas stations, which generates a relatively high gross margin. Costa Rica should liberalize the market, controlling maximum prices to guarantee greater competition and transparency in the pricing system. This requires greater quality of supervision and adequate monitoring of the sales system, not only of gas station purchases.</p>
OP-020-18	Opinion in relation to the Regulation of Technical Vehicle Inspection Services (RITEVE).	<p>1- Law No. 9078 establishes that technical vehicle inspection services should be opened to competition in 2022. The MOPT and other competent bodies must guarantee that this change is carried out in a way that can promote effective competition. 2- This sector is regulated, and not exempt from the enforcement of competition rules.</p>	<p>Given that Law No. 9078 provides for the opening of comprehensive technical vehicle review services for the year 2022, the MOPT and other competent bodies are advised to ensure that this change is carried out in such a way as to effectively promote competition and free concurrence for the benefit of users. Additionally, it is convenient and necessary for the State of Costa Rica to review the concession contract granted to the company RITEVE, in the light of the aforementioned Law, and to analyze, in due time, whether it is no longer necessary to enforce the commitment of informing the concessionaire at least six months in advance of the date, that the contract will not be extended. There is an opportunity to request the early expiration of the Contract, in order to authorize the provision of the service by several companies, thus allowing an increase in the number of stations and variety of choices; more schedules available to the public; a reduction in wait times; the offering of complementary services. In short, consumers get greater benefits from increased competition.</p>
OP-021-18	Opinion concerning the Regulation of Paid Transport of Passengers, Taxis and Similar Modes of Transportation.	<p>1- From the point of view of the promotion of competition, it is possible for formal taxi drivers and platforms such as Uber to offer services concurrently, giving the consumer a wider variety of options. 2- Paid transportation of passengers, in any of its modalities, must comply with the</p>	<p>We recommended analyzing alternative options to the current regulation (Laws No. 7969 and No. 8955, mainly), to enable the paid transport of passengers in taxi mode and guarantee the minimum necessary requirements for the adequate provision of the service, understanding that said regulation has not been able to achieve</p>

minimum necessary standards for the adequate provision of the service. As such, it is also essential to revise the rules that govern formal taxi services, in order to adapt them to current reality.

the objectives for which it was designed, and is not appropriate to the reality of the country nor to the evolution of the economy in the digital age.

Likewise, we recommend legal changes such as eliminating the restriction in the number of license plates and establishing a registry with basic requirements to guarantee the safety, quality and efficiency of the service to the user. These requirements should be mandatorily complied with by all those who decide to offer the service, regardless of the legal figure they use. Establishing a maximum price to avoid abuse in rates, with rigorous controls of both compliance with the requirements and the rate. For control, modern geo-referenced technology systems can be adopted.

In case the decision is made to regulate digital platforms such as Uber, we suggest maintaining the objective of ensuring the safety of drivers and users, without establishing overly specific requirements that may inhibit the appearance of new companies in the market or may cause the exit of existing ones.

65. In 2018, SUTEL continued working on its market study, "Access to essential facilities in vertical and horizontal condominium properties." Since 2015, SUTEL began recording complaints from consumers who believed that their right to freely choose a telecommunications provider could be affected by the decisions of developers and administrators of properties developed under the Condominium Property Law. The main objective of this study has been to identify the most common restrictions faced by telecommunications operators in accessing common areas of a condominium, such as pipelines, poles, telecommunications room and other essential facilities, and then propose solutions to solve these problems and guarantee the right of the end consumer to choose their preferred telecommunications provider. The market study is expected to conclude in 2019.