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**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Costa Rica

-- 2022 --

This report is submitted by Costa Rica to the Competition Committee FOR INFORMATION.

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Table of contents

Executive Summary	3
1. CHANGES TO COMPETITION LAWS AND POLICIES, PROPOSED OR ADOPTED	3
1.1. Summary of new competition law and related legislation	3
1.2. Other relevant measures, including new guidelines.	3
2. ENFORCEMENT OF COMPETITION LAWS AND POLICIES.....	11
2.1. Actions against anti-competitive practices, including agreements and abuses of dominant positions	11
2.2. Mergers and acquisitions	18
3. THE ROLE OF COMPETITION AUTHORITIES IN THE FORMULATION AND IMPLEMENTATION OF OTHER POLICIES, E.G. REGULATORY REFORM, TRADE AND INDUSTRIAL POLICIES.....	22
3.1. Competitor Opinions	22
4. APPEALS BY COMPETITION AUTHORITIES	28
4.1. General resources (current amounts and change from previous year):.....	28
4.2. Period covered by the above information.	29
5. SUMMARIES OR REFERENCES TO NEW REPORTS AND STUDIES ON COMPETITION POLICY ISSUES.....	30
5.1. Market research	30
6. OTHER RELEVANT ACTIONS BY COMPETITION AUTHORITIES.....	33
6.1. Cooperation agreements with other Competition Authorities	33
6.2. Other actions in the field of promotion and advocacy for Competition	34

Tables

Table 1.	12
Table 2.	13
Table 3.	13
Table 4. Costa Rica: Actions for the enforcement of competition law by COPROCOM. 2022	14
Table 5. Costa Rica: Competition law enforcement actions by SUTEL. 2022	15
Table 6. Costa Rica: Judicial reviews of jurisdictional resolutions issued. 2022	17
Table 7. Mergers approved by COPROCOM in 2022	19
Table 8. Approved mergers: COPROCOM 2022	19
Table 9. COPROCOM. OPINIONS ISSUED IN ACCORDANCE WITH LEGAL INSTRUMENT ANALYZED. 2020-2022	22
Table 10. Opinions on regulations, draft regulations and draft laws issued by COPROCOM 2022	23
Table 11. Costa Rica: Opinions on regulations, bills and others issued by SUTEL. 2022	26

Costa Rica

Executive Summary

1. CHANGES TO COMPETITION LAWS AND POLICIES, PROPOSED OR ADOPTED

1.1. Summary of new competition law and related legislation

1. For the year 2022 there are no additional legal provisions to report.

1.2. Other relevant measures, including new guidelines.

1.2.1. On the elaboration of some instruments for the implementation of Law No. 9736

2. As part of Costa Rica's accession process to the Organization for Economic Cooperation and Development (OECD), the country assumed among its commitments the effective implementation and enforcement of the Law for the Strengthening of Competition Authorities of Costa Rica, Law No. 9736.

3. In this sense, the transitional provision XII of Law No. 9736 provides:

"[...] the competition authorities will have a period of up to twelve months from the formation of the Superior Body of COPROCOM, to issue, jointly or separately, the following technical guides: analysis of anticompetitive practices, analysis of mergers, sanctioning procedures before the corresponding competition authority and compliance programs. Additionally, within this period, Coprocom must establish coordination mechanisms with the following sectoral regulators: the National Council for the Supervision of the Financial System (Conassif) and the Public Transport Council (CTP).

4. In order to implement what was ordered in the aforementioned transitional provision, a strategic Roadmap that defines the next steps to be taken by the Competition Authorities of Costa Rica for the years 2020 to 2023 was prepared, which included three pillars to be fulfilled by those Authorities. The first of these pillars includes the strengthening of the regulatory framework governing both competition authorities, including the preparation and issuance of a series of technical regulations, manuals, and guidelines.

A.1 Instruments on behalf of COPROCOM

5. In accordance with the Strategic Roadmap, COPROCOM agreed to make use of its own resources, as well as technical cooperation with the IDB, as described below:

Instruments developed with COPROCOM's own resources.

6. During **2022**, COPROCOM developed and made progress in the following instruments:

Special Procedure Manual for the Investigation of Anticompetitive Practices and Illicit Mergers

7. The objective of the manual is to establish a guide so that the actions are always carried out within the same context and with the necessary minimum provisions. It was approved at the Ordinary Session No. 15-2022 held on the twenty-first day of April 2022.

Instruments developed with IDB resources for COPROCOM.

8. The project "*CR-1212. Program to Strengthen Competition Authorities*" began on December first, 2021, sponsored by the Inter-American Development Bank, hereinafter IDB. The objective of this program is to strengthen the technical capacities of COPROCOM and SUTEL to achieve better application of the regulations, by drafting regulatory instruments: regulations, guides, manuals, and market studies that facilitate effective compliance with national competition policy and legislation and in accordance with international best practices.

9. The technical cooperation program with the IDB has a duration of thirty months and includes three components: regulatory framework, market studies and training in competition policy. In particular, the first component, entitled "Regulatory framework for the implementation of competition legislation", envisages developing the following instruments:

Technical regulations for fee for mergers

10. The purpose of this regulation is to define the methodology to be used by COPROCOM to calculate the filing fee for merger control processes, according to the principle of cost-based service in each phase of the procedure, in accordance with the provisions set forth in article seventeen, section c), of Law No. 9736.

11. By means of the sixth Resolution of the Ordinary Session No. 08 of the Superior Body of COPROCOM, held on March two, 2023, the final text of the "Technical Regulation that Implements the Methodology for the Calculation of the Filing Fee for Merger Control Processes" was approved.

12. Likewise, by means of the Tenth Resolution of the Ordinary Session 10-2023 of the Superior Organ of COPROCOM, it was resolved: 1. To proceed with the publication of the "Technical Regulation that Implements the Methodology for the Calculation of the Filing Fee for the Merger Control Processes", in the Official Gazette (La Gaceta), in order to comply with the provisions of the implementation plan to Law No. 9736. 2. To prepare in parallel a resolution that orders the suspension of the collection, until the human and technological resources are available to implement the collection for the notification of economic mergers. This last resolution is due to the fact that COPROCOM has not received the budget that corresponds to it in accordance with Article 17 of Law No. 9736, and its current resources are extremely limited, making it impossible for it to carry out the processes required for merger control processes.

Guide to conducting market research.

13. The purpose of this tool is to establish the main guidelines for the selection and development of market studies, as well as the implementation and evaluation of the results derived from them.

14. By means of the eighth resolution of the Ordinary Session No. 07-2023 of the Superior Body of COPROCOM, held on February twenty-third, 2023, the final text of the

guide was approved, and the start of the public consultation was ordered, which expires on April seventeenth, 2022.

Guide to unilateral conduct and vertical agreements

15. The purpose of this guide is to establish the criteria used by COPROCOM for the assessment of cases of relative monopolistic practices, whether initiated ex officio or by complaint made by any natural or legal person.

16. The first deliverable is in process by the consultant hired for the development of this guide; the execution of this activity will also take place during 2023.

Guide to economic mergers (notification and analysis)

17. It aims to provide information on the concepts, regulations and procedures associated with the prior notification of economic mergers, as well as the standard approach followed by COPROCOM for the analysis of mergers.

18. The consultant hired by the IDB delivered all the deliverables contemplated in the work plan, observations were made by the COPROCOM technical team, and the final report is awaited. The date of approval of this Guide is scheduled for the first semester of 2023.

Guide for ex-post analysis of authority's decisions

19. It seeks to provide information on the methodologies that COPROCOM could apply to assess the impact of its decisions related to mergers, anti-competitive practices (abuse of dominant power and cartels) and market studies, considering the benefits obtained by consumers in the markets affected by its decisions.

20. Terms of reference have been drawn up and the IDB is awaiting the shortlist to select the consultant who will be in charge of the guide. The date of approval of the Guide is scheduled for the first semester of 2023.

Guidelines on the voluntary compliance program

21. The objective is to provide recommendations to economic agents (managers, representatives, advisors, employees) so that after conducting an internal evaluation they can design their own voluntary compliance program.

22. This project is in the process of being awarded by the IDB, and its execution will take place during 2023.

Regulation on the methodology, criteria, and calculation for the imposition of fines

23. The objective is to establish the methodology and provisions for the calculation of fines to be imposed for infringements of competition regulations, be it Law No. 7472 or Law No. 9736. This tool will develop the parameters and legal circumstances that justify the imposition of a given fine, in order to provide transparency in the process of setting such sanctions.

24. It is in the process of being awarded by the IDB, the execution of this project is expected to take place during 2023.

Proposed structure for COPROCOM

25. The objective is to prepare a proposal for the administrative reorganization for COPROCOM that includes the formal organization, its hierarchical relationships, lines of dependency and relationship with all the elements that make up the organization, in accordance with Transitional provision IX of Law No. 9736.

It is in the process of being awarded by the IDB, the execution of this project will take place during 2023.

Tools developed with IDB resources for both authorities.

Guidelines and manual for the implementation of the leniency program

26. The "Guideline to the *Program of Exemption Benefits and Reduction of Administrative Sanctions*", also known in other jurisdictions as the leniency program, provides economic agents and the general public with guidance on how COPROCOM and SUTEL will receive, analyze, and resolve applications to grant the benefits of the leniency program.

27. The Guide was approved by the eleventh resolution of the Minutes of the Ordinary Session No. 01-2022 of the Superior Body of Coprocom held on January fifth, 2022.

28. As of June, 2022, the implementation of the leniency program began, which included the following actions:

- Guide and materials available on the website.
https://www.coprocom.go.cr/publicaciones/Guias_para_investigacion.html
- An e-mail address was made available to economic operators for submitting applications.
- Dissemination events were held to: Judges (May twenty-fourth, 2022), general public, law firms through the Chamber of Commerce of Costa Rica (May twenty-fifth, 2022) and a workshop were held with the team of the Technical Body (May tenth and twelfth, 2022).

Manual for detecting collusive bidding.

29. The manual seeks to guide officials in the areas of administrative contracting to reduce the risks of collusion between bidders in tenders, through greater attention in the design of the bidding process and collaborating with these officials in the detection of patterns of collusion between bidders during such processes.

30. Offers were received from a number of consultants and the selection of the consultant who will be in charge of the guide is pending. The date of approval of the Guideline is scheduled for 2023.

A.2 Instruments elaborated by SUTEL

31. In order to comply with the commitments assumed in the aforementioned Strategic Roadmap, it was agreed to make use of SUTEL's own resources, as well as resources provided by the Inter-American Development Bank (IDB), as described below:

Instruments developed with SUTEL's own resources.

Abbreviated public tender 2020LA-000011-0014900001.

32. On May 12, 2020, SUTEL published on the platform of the Integrated Public Procurement System (SICOP) the abbreviated public tender 2020LA-000011-0014900001, titled "*Development of Regulatory Instruments within the Plan for the Strengthening of Competition Authorities in the Framework of the OECD Accession Process.*"

33. The abbreviated public tender 2020LA-000011-0014900001 consisted of a series of independent lines, for the development of:

- Internal Procedures Manual
- Guidelines for the imposition of fines
- Manual for the handling of confidential information
- Guidelines for Merger Analysis
- Guidelines for Merger Prior Notification
- Technical Regulations, including the following topics:
 - Procedure for early termination
 - Promotion and Advocacy for Competition
 - Methodology for calculating fines for infringement of the Law
 - Mandatory prior notification of mergers
 - Dawn raid and inspections procedure
 - Leniency Program
 - Surveillance and compliance with resolutions issued by the Competition Authority.

34. The status of progress in the development of each of these instruments is described below:¹

- Internal Procedures Manual

35. On December 1, 2020, the award of line 1 of the Abbreviated Public Tender 2020LA-000011-0014900001 was notified, corresponding to the preparation of an Internal Procedures Manual.

36. The procedures were approved through agreements 028-053-2022 of July 28, 2022 and 048-075-2022 of November 10, 2022, both of the SUTEL Council.

- Guidelines for imposing fines for infringements of competition law

37. On October 23, 2020, the adjudication of line 2 of the abbreviated public tender 2020LA-000011-0014900001 was notified, corresponding to the Guide for the imposition of fines relating to infringement of competition regulations.

¹ It should be noted that the execution of this contract was suspended from March 2021 until November 3, 2021, as a result of a delay by the Executive Branch, in the publication of the Executive Regulation to Law N°9736, with the aim of ensuring consistency between the regulatory instruments associated with Law N°9736.

38. According to internal timetable, it is expected that this Guide will be officially published in 2023.²

- Manual for the Handling of Confidential Information

39. On December 1, 2020, the adjudication of line 4 of the abbreviated public tender 2020LA-000011-0014900001 was notified, corresponding to the development of a Manual regarding the handling of confidential information.

40. The procedure was approved by Sutel Council's agreement 043-074-2022 of November 3, 2022.

- Guidelines for Merger Analysis

41. On October 23, 2020 the adjudication of line 5 of the Abbreviated Public Tender 2020LA-000011-0014900001, i.e. the Guidelines for Merger Analysis was notified.

42. This instrument develops the standard methodology for economic merger analysis, including the main analytical techniques and types of evidence used to assess whether a merger is likely to significantly impede competition.

43. The Guideline was approved by SUTEL Council's resolution 018-028-2022 of March 24, 2022.³

- Guidelines for Merger Prior Notification

44. On December 1, 2020, notification was given of the adjudication of line 6 of the Abbreviated Public Tender 2020LA-000011-0014900001, that is, the Guidelines for Merger Prior Notification.

45. This Guideline sets the obligations and requirements for notifying mergers to the competition authority, provides information on the concepts, regulations and procedures associated with the prior notification of mergers, in order to facilitate the procedure for economic operators.

46. The Guide was approved by SUTEL Council's agreement 029-042-2022 of June 2, 2022.⁴

- Technical Regulation

47. On August 26, 2020, the adjudication of line 7 of the abbreviated public tender 2020LA-000011-0014900001, regarding the Technical Regulation of Law No. 9736, was notified.

48. On November 25, 2021, through SICOP, the contractor presented the final version of the Technical Regulation of Law No. 9736, which was received to satisfaction by SUTEL.

49. During the months of December 2021 and March 2022, a series of internal and external workshops were held to expose the main results of the proposal presented by the consultant.

50. On July 8, 2022, the General Directorate for Competition of SUTEL presented the *"Proposal to modify the Regulation of the Competition Regime in Telecommunications"* for

² This Guide depends on the provisions of the Technical Regulations of the Law N°9736.

³ Available in:

https://www.sutel.go.cr/sites/default/files/guia_para_el_analisis_de_concentraciones.pdf

⁴ Available in: https://www.sutel.go.cr/sites/default/files/guia_notificacion_concentraciones.pdf

the Council's assessment; which was approved by agreement 026-050-2022 of that same date and notified to the Board of Directors of ARESEP on August 1, 2022. On August 12, 2022, the Board of Directors of ARESEP authorized the aforementioned proposal to be submitted to the public hearing procedure, which took place on November 24, 2022 and the process is currently expected to be concluded in 2023.

Abbreviated public tender 2021LA-000005-0014900001

51. On August 20, 2021, the abbreviated public tender 2021LA-000005-0014900001 titled "Development of Regulatory Instruments within the Plan for the Strengthening of the Competition Authorities in the Framework of the OECD Accession Process" was published in SICOP.

52. The abbreviated public tender 2021LA-000005-0014900001 was composed of two independent lines, for the preparation of:

- Guidelines for conducting market studies and Guidelines for evaluating regulations from competition policy perspective (Line 1).
- Market study on the pipeline infrastructure that supports telecommunications networks and its impact on market competition (Line 2).

53. The progress status in the development of each of these instruments is described below:

- Guidelines for conducting market studies and research.

54. On January 26, 2022, the adjudication of line 1 of the abbreviated public tender 2021LA-000005-0014900001 was notified, regarding the preparation of the Guidelines for conducting market studies and research.

55. The Guidelines aim to develop both the procedure for conducting a market study, as well as the characterization and scope of market studies in the field of promotion and advocacy for competition, determinants for the selection and prioritization of markets to analyze, stages, and ex-post analysis of market studies.

56. The Guidelines were approved by resolution 020-069-2022 of October 6, 2022 of the SUTEL Council.⁵

- Guidelines for the evaluation of regulations from the competition perspective

57. On January 26, 2022, the adjudication of line 1 of the abbreviated public tender 2021LA-000005-0014900001 was notified, corresponding to the preparation of the Guidelines for the evaluation of regulations from the competition perspective.

58. These Guidelines aim to develop the methodology and instruments to be followed by SUTEL in the analysis and evaluation of new rules or regulations that have the potential to affect market competition.

59. The Guidelines were approved by resolution 037-061-2022 of September 1, 2022 of the SUTEL Council.⁶

⁵ Available in: https://www.sutel.go.cr/sites/default/files/guia_estudios_de_mercado_sutel_v2.pdf

⁶ Available in: https://www.sutel.go.cr/sites/default/files/guia_evaluacion_de_regulaciones_sutel.pdf

Abbreviated public tender 2022LA-000008-0014900001.

60. On July 22, 2021, through official document CID/CCR/ 772/2021 (NI-09224-2021), regarding the follow-up of project "*CR-1212. Program for the Strengthening of Competition Authorities*", the IDB reported that technical assistance resources were allocated to meet SUTEL's needs in relation to the Internal Manual for Dawn Raids and Inspections and the Guidelines for Detection of Collusive Bidding (a tool that will be shared with COPROCOM).

61. In this sense, SUTEL saw the need to readjust its internal planning to proceed to incorporate the following instruments into the projects to be developed in 2023:

- Guide for the analysis of unilateral conduct and vertical agreements
- Guidance on Compliance Programs
- Guide and Manual for ex-post analysis of decisions of the competition authority.

62. Therefore, on November 8, 2022, the notice for the abbreviated public tender offer 2022LA-000008-0014900001 titled "*Contracting of Professional Services for the elaboration of instruments to be used by SUTEL in the application of Law 9736*" was published in the SICOP, integrated by a single line for the elaboration of the three instruments mentioned above.

63. On January 10, 2023, contract 2022LA-000008-0014900001 was adjudicated, and is expected to be concluded during 2023.

Instruments to be developed through IDB technical cooperation

Internal manual for conducting inspections and dawn raids.

64. On July 22, 2021, through the aforementioned official document CID/CCR/ 772/2021 (NI-09224-2021), the IDB in follow-up to the project "*CR-1212. Program for the Strengthening of Competition Authorities*" reported that technical assistance resources were allocated to meet SUTEL's needs in relation to the Internal Manual for Conducting Inspections and Dawn Raids; technical cooperation that was formally approved by the IDB as communicated on October 20, 2021.

65. On November 4, 2022, SUTEL sent the terms of reference requested by IDB in relation to the aforementioned Manual, as well as references of national based consultants who could develop the project.

66. Currently SUTEL is awaiting the adjudication process by the IDB and it is estimated that the execution of this project will take place during 2023.

A.3 Instruments by both Competition Authorities, with IDB resources

Internal Guide and Manual for the Implementation of Leniency Policy and Training Workshops

67. Based on what was requested in the aforementioned note DM-1418-2019, in 2020 COPROCOM and SUTEL agreed with the IDB to carry out a non-reimbursable technical cooperation for the preparation of a Guide and Internal Manual for the Program of Exemption Benefits and Reduction of Administrative Sanctions.

68. The IDB tendered the "*Consultancy for the Development of Capacities in Leniency and Strengthening of the Competition Authorities of Costa Rica*"; for the preparation of the "*Guide to the program of exemption benefits and reduction of administrative sanctions*"

and the "*Internal Manual for the program of benefits of exoneration and reduction of administrative sanctions*"; which was adjudicated in 2020.

69. On December 10, 2021, the consultant firm hired by the IDB submitted the final version of the Guide for public consultation and the Internal Manual.

70. The Guide provides guidelines for the procedures that economic agents and individuals must follow to obtain access to the leniency program of exemption benefits and reduction of administrative sanctions, as well as the criteria that the competition authorities will follow to determine whether to grant these benefits or not.

71. For its part, the "*Manual for the program of exemption benefits and reduction of administrative sanctions*" establishes the internal procedure that the corresponding competition authority will follow at the time of receiving an application to the leniency program of exemption benefits and reduction of administrative sanctions. The Manual also provides instructions and recommendations to COPROCOM and SUTEL officials to contribute to the effective implementation of the leniency program.

72. The Guide was approved by Sutel's Council agreement 019-028-2022 of March 24, 2022.⁷

Manual for detecting collusive tenders

73. On July 22, 2021, through official letter CID/CCR/ 772/ 2021 (NI-9224-2021), the IDB followed up on the project "*CR-1212. Program for the Strengthening of Competition Authorities*" and reported that technical assistance resources were allocated to meet SUTEL's needs related to the Manual for Detecting Collusive Tenders (an instrument that will be shared with COPROCOM); technical cooperation was formally approved by the IDB as communicated on October 20, 2021.

74. Currently SUTEL is awaiting the adjudication process by the IDB and it is estimated that the execution of this project will take place during 2023.

Government proposals for new legislation.

75. There are no other legal provisions to report for the year 2022.

2. ENFORCEMENT OF COMPETITION LAWS AND POLICIES

2.1. Actions against anti-competitive practices, including agreements and abuses of dominant positions

2.1.1. Cartels and agreements

COPROCOM

76. In the year 2022, the investigation stage of file No. 02-2021-IP began, for the alleged realization of absolute monopolistic practices, specifically, for several alleged price agreements in the commercialization of flowers. This is because at the preliminary

⁷ Available in:

https://www.sutel.go.cr/sites/default/files/guia_del_programa_de_beneficios_de_exoneracion_y_reduccion_de_sanciones_0.pdf

investigation stage sufficient evidence was found to presume that punishable conduct has been committed. This procedure is still at the pre-trial stage.

77. In addition, a preliminary investigation was closed in the pork meat market because there were no indications that the facts complained of were the result of an agreement between competitors.

78. The following cases of alleged absolute monopolistic practices remain at the preliminary investigation stage:

Table 1.

FILE NO.	MARKET	ALLEGED CONDUCT
041-2021-D	Construction of Public Works	Collusive bidding
065-2021-D	Supervision of construction of public works	Collusive bidding
022-2022-IO	Medical services	Collusive bidding
071-2022-D	Office furniture	Collusive bidding

79. Likewise, an agreement in the rice market was sanctioned by the Superior Body, as follows, the details of the case:

- COPROCOM SANCTIONED NINE COMPANIES IN THE RICE AGRO-INDUSTRIAL SECTOR FOR AGREEING NOT TO PURCHASE RICE FROM THE DOMESTIC PRODUCER⁸

80. COPROCOM sanctioned an agreement between nine competitors in the agro-industrial sector not to buy rice from the domestic producer until a consumer price decree was published, by virtue of the absolute monopolistic practice established in article 11, paragraph e) of the Law on the Promotion of Competition and Effective Consumer Protection. Law No. 7472.⁹

81. In the procedure carried out ex officio by COPROCOM, it was confirmed that two resolutions adopted in the Assemblies of Agroindustriales del Arroz of the fifth and twelfth of August, 2019, were the preparatory acts and the origin, the basis and guide of the adoption of a subsequent resolution adopted on **December 2, 2019** in the Ordinary Session 885-12-2019 of the Board of Directors of CONARROZ (agreement 3.2.1), by means of which, it was finally agreed **not to purchase the national production of rice**, until the consumer price decree was published, date on which the Law on the Strengthening of Competition Authorities (Law No. 9736) was in force and therefore applicable.

82. The conduct of the economic agents involved was classified as very serious in accordance with the provisions of Article 118, paragraph a) of Law No. 9736. For the imposition of (individual) sanctions, article 119, paragraph e) of the same normative body was used, which establishes that very serious infractions will be sanctioned by a fine equivalent to an amount between zero point one percent (0.1%) and up to ten percent (10%) of the total turnover of the economic agent in the fiscal year immediately prior to the imposition of the penalty.

⁸ File No. 072-19-IO.

⁹ Corporación Arrocera Costa Rica S.A.; CoopeLiberia R.L.; Compañía Arrocera Industrial S.A.; Derivados del Maíz Alimenticio S.A.; Comercializadora Inter Global INTERGLO S.R.L.; Arrocera La Julieta Ltda.; Cooparroz R.L.; Arrocera Liborio S.A.; and Arrocera San Pedro de Lagunilla S.A.

83. The sanctions imposed on each of the nine agents involved in the practice, in accordance with the provisions of Vote COPROCOM-022-2022, of July twenty-six, 2022, range from more than eight million colones to more than two billion colones, in accordance with the parameters indicated above. Together, **all the sanctions imposed total more than five billion colones (equivalent to eight million dollars).**

SUTEL

84. In 2021, SUTEL carried out the *ex officio* opening of the special competition procedure, regarding the alleged commission of anticompetitive practices, in the figure of a collusive bidding for the allocation of radio spectrum frequencies. For 2022 and until now, this special procedure is taking place, and currently in the preliminary investigation stage (which is confidential according to the provisions of Article 38 of Law 9736), the details of which are as follows:

Table 2.

Markets	Behaviors	Resolution
Narrowband spectrum	Absolute (collusive bidding)	ROTC-00071-SUTEL-2021

Note:
Source:

2.1.2. Abuses of dominant position and vertical restraints

85. Regarding the abuse of dominant position, in 2022 the competition authorities resolved some relevant cases, and initiated new ones, as follows:

COPROCOM

86. In 2022, the Promotion and Investigations Unit sent file No. 23-2020-D to the Investigation Stage, to determine the existence of sufficient evidence of alleged punishable conduct. The facts investigated relate to the alleged imposition of conditions by a sports content marketer on subscription television operators. This procedure as of December 2022 was in the stage of instruction.

87. On the other hand, two preliminary investigations were concluded for alleged monopolistic practices relating to logistics services for the importation of goods, and in the marketing of insurance that were archived, since the existence of indications of the realization of these conducts was not determined.

88. The following cases for alleged monopolistic practices remain at the preliminary investigation stage:

Table 3.

FILE NO.	MARKET	ALLEGED CONDUCT
072-2021-D	Foodstuffs in general	Establishing barriers for new competitors
073-2021-D	Paper products for personal hygiene	Exclusivity contracts
002-2022-D	Insurance	Price depredation
047-2022-IO	Digital platforms for the delivery service of prepared food	Exclusivity contracts
055-2022-D	Beverages	Exclusivity contracts
061-2022-D	Candy	Establishing barriers for new competitors
074-2022-D	Sports betting	Establishing barriers for new competitors

SUTEL

89. In 2022, SUTEL's Investigation and Mergers Unit ordered the initiation of three special procedures (resolutions ROTC-00001-SUTEL-2022, ROTC-00031-SUTEL-2022 and ROTC-00081-SUTEL-2022) for possible vertical restraints and/or non-notified merger in the Telecommunications Infrastructure market (Files GCO-OTC-PM-01346-2021, GCO-OTC-CNN-00486-2022 and GCO-OTC-PM-02328-2022), all of which are confidential as stated in Article 38 of Law 9736). These files are currently under preliminary investigation.

90. In the same reporting period, SUTEL's Investigation and Mergers Unit dismissed without imposing any fine, two special competition procedures in the preliminary investigation stage, which corresponded to alleged vertical restraints in the market for shared telecommunications infrastructure (files GCO-OTC-PM-00467-2021 and GCO-OTC-PM-01488-2021). In both cases it was determined that the evidence collected during that procedural stage was insufficient to substantiate the initiation of the instruction stage (resolutions ROTC-00027-SUTEL-2022 and ROTC-00056-SUTEL-2022).

91. Likewise, in 2022, the Investigation and Mergers Unit referred to the instruction stage an alleged unnotified merger in the residential internet service and television service markets (resolution ROTC-00043-SUTEL-2022). Likewise, during that same year, the Unit of Instruction and Promotion and Advocacy of SUTEL ordered the beginning of the instruction stage of this special procedure and the charges against the companies investigated for alleged failure to have previously notified an economic merger (resolution ROTC-00045-SUTEL-2022) (File GCO-OTC-CNN-00500-2021).¹⁰

92. Finally, in 2022, the Instruction Unit brought before the decision-making stage a procedure for alleged anticompetitive practices in the following markets: wholesale of access to the optical fiber network in digital mode, residential Internet access service, subscription television services and fixed line telephony service (07125-SUTEL-OTC-2022) (File GCO-OTC-PM-00695-2020); procedure that to date are in the final special competition procedure stage.

2.1.3. Summary of activities of the Competition Authorities*COPROCOM*

93. The following table shows the competition law enforcement actions:

Table 4. Costa Rica: Actions for the enforcement of competition law by COPROCOM. 2022

File Nº	Markets	Behaviors	Resolution	Status
FILES UNDER INVESTIGATION				
075-2020-D	Sugar	Non-compliance with conditions	N/A	Moved back to the research stage
001-2021-IO	Vehicles	Implementation of merger	RES-INV-05-2022	Completed
008-2021-D	Insurance	Vertical Restraint (Discount conditional on the purchase of another product)	RES-INV-07-2022	Completed
022-2021-IO	Supermarkets	Failure to notify a merger	RES-INV-10-2022	Completed

¹⁰ This procedure is currently in the decision-making stage, according to official letter 02108-SUTEL-OTC-2023.

041-2021-IO	Construction of public works	Cartel (Collusive bidding)	RES-INV-14-2021	Preliminary Investigation
051-2021-D	Pork	Cartel (Price Agreement)	RES-INV-23-2022	Completed
065-2021-D	Supervision of public works	Cartel (Collusive bidding)	RES-INV-22-2021	Preliminary Investigation
072-2021-D	Agricultural products	Vertical Restraint (Imposition of conditions, restriction of entry)	RES-INV-23-2021	Preliminary Investigation
073-2021-D	Paper and cleaning products	Vertical Restraint (Exclusivity)	RES-INV-24-2021	Preliminary Investigation
002-2022-D	Insurance	Price depredation	RES-INV-04-2022	Preliminary Investigation
022-2022-D	Medical services	Cartel (Collusive bidding)	RES-INV-12-2022	Preliminary Investigation
047-2022-IO	Food delivery service	Vertical Restraint (Exclusivity)	RES-INV-16-2022	Preliminary Investigation
002-2022-IO	Medications	Cartel	RES-INV-17-2022	Preliminary Investigation
055-2022-D	Beer	Vertical Restraint (Exclusivity)	RES-INV-21-2022	Preliminary Investigation
061-2022-D	Candy	Vertical Restraint (Exclusive Distribution)	RES-INV-22-2022	Preliminary Investigation
071-2022-D	Office furniture	Cartel (Collusive bidding)	RES-INV-24-2022	Preliminary Investigation
073-2022-D	Electronic betting	Vertical Restraint	RES-INV-32-2022	Preliminary Investigation
FILES UNDER INVESTIGATION				
002-2021-D	Flowers	Cartel (Price Agreement)		Pending hearing
014-2020-D	Sports content for pay TV	Vertical Restraint (Imposition of conditions)	RES-INV-013-2022	Pending hearing
FILES AT THE DECISION-MAKING STAGE				
Procedure with Law No. 7472				
08-2019-IO	Radio content and sale of advertising space.	Unnotified Merger	Vote No. 049-2020	Pending review appeals
Procedures with Law No. 9736				
072-2019 PO	Rice in pellets	Cartel (Agreement to refuse to buy or sell goods or services)	Agreement 14 of the Minutes of the Ordinary Session No. 08-2023	Pending a reassessment of the fine filed in Vote No. 022-2022

Source: Prepared by the author with information from the Technical Unit of COPROCOM.

SUTEL

94. The following table summarizes SUTEL's work in the enforcement of competition law.

Table 5. Costa Rica: Competition law enforcement actions by SUTEL. 2022

SUTEL					
Records under investigation					
Dossier	Markets	Behaviors	Enterprises	Resolution	Status
GCO-OTC-PM-01538-	Narrowband spectrum	Cartel (Collusive bidding)	Confidential*	ROTC-00071-SUTEL-2021	Preliminary Investigation

2021 ¹¹					
GCO-OTC-PM-01346-2021	Shared telecommunications infrastructure	Vertical restraints (refusal of treatment, exclusivity/impediment of competition)	Confidential*	ROTC-00001-SUTEL-2022	Preliminary Investigation
GCO-OTC-CNN-00486-2022	Shared telecommunications infrastructure	Unnotified and relative merger (exclusivity)	Confidential*	ROTC-00031-SUTEL-2022	Preliminary Investigation
GCO-OTC-PM-02328-2022	Shared telecommunications infrastructure	Vertical restraints (refusal of treatment, exclusivity/impediment of competition)	Confidential*	ROTC-00081-SUTEL-2022	Preliminary Investigation
GCO-OTC-PM-00467-2021	Shared telecommunications infrastructure	Vertical restraints (refusal of treatment/impediment of competition)	Administrative Board of the Municipal Electric Service of Cartago (JASEC)	ROTC-00027-SUTEL-2022 (rejection)	Completed
GCO-OTC-PM-01488-2021	Shared telecommunications infrastructure	Vertical restraints (refusal of treatment/exclusivity/impediment of competition)	Cabletica S.A.	ROTC-00056-SUTEL-2022 (rejection)	Completed
Records in Instruction					
GCO-OTC-CNN-00500-2021	Residential Internet and Subscription TV	Unnotified Merger	Transdatelecom S.A. and Cable Arenal del Lago S.A.	ROTC-00045-SUTEL-2022 (opening instruction) 02108-SUTEL-OTC-2023 (transfer to Council)	Completed
GCO-OTC-PM-00695-2020	Shared telecommunications infrastructure, Subscription TV, Fixed telephony, and residential internet	Abuse of dominant position (Margins narrowing) Vertical restraints (Rule of treatment, Exclusivity)	ESPH	ROTC-00076-SUTEL-2021 (opening instruction) 07125-SUTEL-OTC-2022 (transfer to Council)	Completed

*Data reserved, as it is confidential during the Preliminary Investigation stage (according to article 38 of Law 9736).

2.1.4. Judicial review

COPROCOM

95. The following table summarizes judicial reviews of jurisdiction decisions.

Table 6. Costa Rica: Judicial reviews of jurisdictional resolutions issued. 2022

COPROCOM				
Judicial Decision	Administrative Resolution	Conduct	Enterprises	Judicial Review
N°20-1006-1027-CA, in the Administrative and Civil Tribunal of Finance	COPROCOM Vote No. 91-2018	Vertical conduct, in accordance with Article 12 of Law No. 7472	Four companies in the medicines market	Submitted to the Courts of Justice, since the plaintiff companies filed a declaratory judgment action against Resolution 91-2018, along with an amendment to the pleadings of the main claim.
Judicial File No. 19-007808-1027-CA-9 and Cumulative 20-000569-1027-CA Administrative Court	COPROCOM Vote No. 93-2018	Refusal to authorize a merger	Companies in the retail supply market (supermarkets)	Submitted to the Courts of Justice, the lawsuit filed by COMECA RETAIL S.A. was answered and the consolidation of the processes was approved. A hearing was scheduled for May 23, 2022.
File 23-001358-1027-CA Contentious Administrative Tribunal	Vote No. 022-2022, of the sixteen hours and five minutes of the twenty-sixth of July, 2022	The company was sanctioned in accordance with the provisions of Article 11 paragraph e) of Law No. 7472, absolute monopolistic practices	Corporación Arrocería Costa Rica S.A.	Precautionary Measure
23-001094-1027-CA	Vote No. 022-2022, of the sixteen hours and five minutes of the twenty-sixth of July, 2022	The company was sanctioned in accordance with the provisions of Article 11 paragraph e) of Law No. 7472, absolute monopolistic practices	Compañía Arrocería Industrial S.A.	Precautionary Measure
23-0001129-1027-CA	Vote No. 022-2022, of the sixteen hours and five minutes of the twenty-sixth of July, 2022.	The company was sanctioned in accordance with the provisions of Article 11 paragraph e) of Law No. 7472, absolute monopolistic practices	Derivados del Maíz Alimenticio, S.A.	Precautionary Measure

Source: Prepared by the author with information from the Technical Unit of COPROCOM.

SUTEL

96. In the case of SUTEL, there were no judicial reviews in 2022 to report.

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

COPROCOM

97. In the year 2022, 11 complaints were received, of which five were filed as inadmissible and six preliminary investigations were initiated in the markets of insurance, medical services, sweets, furniture, and sports betting.

98. On the other hand, considering the power to initiate ex officio investigations into the alleged performance of anticompetitive conduct, in the year 2022 an ex officio investigation was initiated in the market of platforms for the delivery service of prepared meals.

99. In addition, in the year 2022, six preliminary investigations were concluded, of which four were archived since no indications of punishable conduct were detected, and two cases were referred to the investigation stage; one of them for alleged monopolistic practices relative in the market of transmission of sporting events and the other case for an alleged price agreement in the commercialization of flowers.

100. As explained in the section on cartels, in relation to the sanctioned procedures, the agreement made between nine competitors in the agro-industrial sector not to buy rice from the domestic producer until a consumer price decree was published is of particular relevance. This agreement was classified as an absolute monopolistic practice established in Article 11 paragraph e) of the Law on the Promotion of Competition and Effective Defense of the Consumer, Law No. 7472.

101. Likewise, a sanction was imposed on various economic agents of the pharmaceutical sector, for omitting the mandatory prior notification of mergers to COPROCOM, for the acquisition of six pharmacies in the years 2016, 2017 and 2018 in different provinces of the country, when they had the duty to do so.

SUTEL

102. In the year 2022, the General Directorate for Competition of SUTEL, completed the preliminary investigation stage of the special procedure according to file GCO-OTC-CNN-00500-2021, in which an alleged unnotified merger in the residential internet service market and subscription television service was analyzed and consequently began the instruction stage of the special procedure, carrying out for this purpose the notification of charges against the companies investigated. This file is currently at the decision-making stage.

103. Likewise, in 2022, the General Directorate for Competition of SUTEL transferred to the decision-making stage of the special procedure the file GCO-OTC-PM-00695-2020 for alleged anticompetitive practices related to the markets: wholesale of access service to the optic fiber network in digital mode, residential Internet service, subscription television service and fixed telephony service; procedure that to date is in the final stage.

104. Both cases are the first two special procedures by the General Directorate for Competition of SUTEL, under the rules provided in Law No. 9736 and in which it has been possible to comply with the deadlines established in that Law for each of the procedural stages in charge of the aforementioned Directorate.

2.2. Mergers and acquisitions

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

COPROCOM

105. During the year 2022, COPROCOM received a total of 32 prior notifications of mergers, of which 24 were analyzed and concluded, of these 18 were approved in the first phase without conditions, one with conditions in the first phase, two approved in the second phase without conditions and three were archived because they were not considered a merger that had to be notified. In this regard, it is important to indicate that for 2023 mergers of 2022 were pending analysis, which will be considered in the statistics of the current year.

106. Thus, Table N°4 shows the detail of the total number of merger operations processed according to the resolution phase.

Table 7. Mergers approved by COPROCOM in 2022

RESULTS	2022
Approved in the first phase	18
Approved in the First Phase (with conditions)	1
Approved in Second Phase (no conditions)	2
Approved in Second Phase (with conditions)	0
Rejected	0
Withdrawn by the notifiers	0
Archived (for not meeting the threshold or not corresponding to a merger in the terms of Law 9736)	3
Total processed per year	24

Source: COPROCOM Merger Unit

107. Likewise, Table N°5 shows the detail of the cases of economic mergers that were approved in 2022:

Table 8. Approved mergers: COPROCOM 2022

Vote N°	N° EXP.	AFFECTED MARKETS(*)	STATE
008-2022	098-2021-EC	Production and sale of fish meat.	Approved in the first phase
001-2022	101-2021-EC	Carbon reduction services, specialized in sustainable environmental credit markets.	Approved in the first phase
002-2022	102-2021-EC	Neutral wholesale marketing of fiber optics in the telecommunications market.	Approved in the first phase
003-2022	103-2021-EC	Operation and development of enterprise-class, carrier-neutral, multi-tenant, and single-tenant data centers in the United States and Europe.	Approved in the first phase
004-2022	104-2021-EC	Production and marketing of dairy products.	Approved in the first phase
007-2022	001-2022-EC	Logistics Contracts Market.	Approved in the first phase
005-2022	006-2022-EC	Health services in nutrition through nutritional consultation, with a clinical approach.	It is archived for not meeting the individual threshold
006-2022	007-2022-EC	Operation of public charging points for electric trucks and buses in selected and agreed countries in Europe.	Approved in the first phase
010-2022-EC (I Phase)25-22 (II Phase)	008-2022-EC	Manufacture, production, marketing and distribution of cement, concrete, aggregates, and mortars.	Approved in Second Phase with conditions
011-2022	012-2022-EC	Sales and distribution of certain raw materials and ingredients for various industries.	Approved in the first phase
013-2022	014-2022-EC	Development of industrial and logistics real estate market free zone and operation of industrial real estate and logistics free zone.	In First Phase Analysis
009-2022	015-2022-EC	Infrastructure services for telecommunications.	Approved in the first phase
012-2022	023-2022-EC	Producer and bottler of non-alcoholic beverages ("NAB").	Approved in the first phase
016-2022-EC (I Phase) 20-2022 (II Phase)	024-2022-EC	Retail sale of basic necessities, such as: supermarkets, mini super, suppliers, grocery stores, convenience stores; medicines (pharmacies), sale of paints.	Approved in Second Phase
021-2022	028-2022-EC	Container yard services.	Approved in the first phase

017-2022	029-2022-EC	Provision of financial services and granting of credit.	Approved in the first phase
015-2022	030-2022-EC	Market for road and highway construction in India.	Approved in the first phase
026-2022	033-2022-EC	Confectionery.	Approved in the first phase
024-2022	037-2022-C3	Gabion structures, geosynthetics, wires and wire products, rockfall protection systems.	Approved in the first phase
023-2022	039-2022-EC	N/A	It is archived because it does not correspond to a merger under the terms of Article 88 of Law No. 9736
29-2022	044-2022-EC	Marketing and distribution of vehicles and spare parts within the country.	Approved in the first phase
038-2022	046-2022-EC	Manufacture and marketing of cement and the extraction, manufacture, and marketing of aggregates for construction and its relationship with the manufacture of prefabricated.	Approved in First Phase with commitments
033-2022	047-2022-EC	Manufacturing products of crown caps, twist open, and tassel containers.	Approved in the first phase
040-2022	049-2022-EC	Acquisition and administration of loans declared bad for collection and recovery.	Excepted from prior notification, (Article 91, paragraph a)

Source: COPROCOM Merger Unit

SUTEL

108. During 2022, SUTEL did not receive prior notifications of mergers, resulting in no data to report in this regard.

2.2.2. Summary of important cases

COPROCOM

109. Here are two of the most relevant mergers:

Mergers in the cement market (Administrative File No. 008-2022-EC)

110. On the eleventh of February, 2022, the notification of a merger involving Grupo Cempro Costa Rica S.A. (buyer), Cemex Colombia S.A. (seller) and Cemex Costa Rica S.A. (target company) was received for examination.

111. The transaction would consist of, Grupo Cempro Costa Rica S.A. acquiring, through the purchase and sale of shares, 99.38% of the total shares of Cemex Costa Rica, and as a result of the above, obtaining **control** over the target company.

112. The selling and target company participate in:

- CEMEX Colombia S.A., a corporation duly organized and existing under the laws of Colombia, is part of the Cemex economic interest group. In Costa Rica it had no commercial activity beyond that carried out by the target company.
- Cemex Costa Rica S.A., a subsidiary of the Seller, is engaged in our country in the manufacture, production, marketing and distribution of cement, concrete, mortars, and aggregates for construction, with occasional export of cement to Nicaragua and Salvador. In addition, it is a franchisor of the hardware stores "Construrama".

113. For its part, the purchasing company:

- Grupo Cempro Costa Rica S.A. is controlled by and part of the economic interest group "Progreso". It operates in Guatemala, Colombia, Honduras, Belize, and Panama, in the manufacturing, production, marketing and distribution of cement, construction materials, energy and real estate.
 - In Costa Rica, the main economic activity is the rental of real estate properties of its own (warehouses, offices, and lots), as well as commercialization of lime, paper sacks and electricity.
114. Accordingly, the relevant market was determined as follows:
- Manufacture, production, marketing and distribution of cement, concrete, aggregates, and mortars.
 - Franchise of hardware stores, commercially known as "Construrama".

115. COPROCOM considered that the transaction could generate risks to the competition process due to the existence of a non-compete clause agreed between the parties for a period of five years, in the markets involved in the transaction, so it was determined that it should follow the procedure established for the analysis of mergers in the second phase, as provided for in Articles 94 and 98 of Law No. 9736.

116. As a result of the analysis of the second stage, it was determined that the operation did not have the effect of undue restriction of competition, nor the increase of substantial power, considering among other things that the percentage of market share of the Buyer does not change before or after the transaction, as it is a pure conglomerate type operation, in which there is no horizontal overlap in the activities of the parties or vertical integration.

117. However, one of the ancillary restrictions agreed between the Parties involved would be limiting for a period of time longer than the average established by COPROCOM and international best practices, the entry of a potential competitor, such as CEMEX, in some markets that could be considered highly concentrated, such as cement. The foregoing could have negative effects on competition, mainly considering that the target company has a significant participation in the cement manufacturing and marketing market in Costa Rica; market that has oligopolistic conditions, having three competing agents and presenting significant barriers to entry.

118. Therefore, COPROCOM considered that the proposed commitments provided by Grupo Cempro Costa Rica S.A. was directly related to the anticompetitive effects identified and communicated in Vote No. 010-2022, being effective to counteract the foreseeable effects of the operation.

119. In this regard, the merger involving the companies Grupo Cempro Costa Rica S.A., and Cemex Colombia S.A., for the acquisition of Cemex Costa Rica S.A., by the former, was authorized, subject to compliance with the proposed commitment to reduce the term of the non-compete clause to three years in the closing documents. Said term begins as of the signing of the final documents.

120. On the other hand, with regard to mergers that were not notified to COPROCOM, in the year 2022, an administrative procedure was completed in which a group of pharmaceutical companies was sanctioned for failure to notify an economic merger. The summary of the case is as follows:

Sanctioning pharmaceutical companies for failure to notify mergers

121. COPROCOM sanctioned the economic group COFASA (the buyer), as well as the companies Medicamentos Bolosa S.A., Danisa William S.A. and Hermanos Núñez

Martínez S.A., and two natural persons (the sellers), for failing to notify the said authority in advance of mergers between these companies. The total sanction imposed on those involved exceeds ₡130 million colones (\$191,000), a sanction that is final, as the administrative appeal process has been exhausted.

122. In the procedure carried out, it was established that various companies that make up the COFASA economic group were gradually acquired, over several years, six pharmacies, and none of these transactions was notified to COPROCOM, when they had the obligation to do so in order to comply with the parameters established for in the Law on the Promotion of Competition and Effective Consumer Defense. N°7472.

123. Law No. 7472, which provides for lower penalties, was used to impose the sanction in question, since the mergers analyzed were carried out while that rule was in force, which was subsequently amended by Law No. 9736.

3. THE ROLE OF COMPETITION AUTHORITIES IN THE FORMULATION AND IMPLEMENTATION OF OTHER POLICIES, E.G. REGULATORY REFORM, TRADE AND INDUSTRIAL POLICIES.

3.1. Competitor Opinions

3.1.1. COPROCOM

124. COPROCOM issued 29 opinions throughout the year 2022 on various topics. Of these, 93% (27) were issued at the request of a party, which shows the importance of the competition authority as a consultative body for users.

125. In 2022, the largest number of requests for criteria came from Congress, followed by public entities (such as the Ministry of Economy, Industry and Trade and the Ministry of Finance), and others, a concept that includes companies, generally SMES, in relation to regulations or administrative acts that they consider restrict competition, and in smaller numbers, they came from business chambers.

126. The following table shows a comparison of the opinions issued by COPROCOM according to the legal instrument analyzed.

Table 9. COPROCOM. OPINIONS ISSUED IN ACCORDANCE WITH LEGAL INSTRUMENT ANALYZED. 2020-2022

LEGAL INSTRUMENT	2020	2021	2022
Bill of law	13	9	11
Draft Rules of Procedure	2	7	5
Current Regulations	1	4	1
Competing Markets	0	3	3
Administrative Acts	1	2	0
Sector and Market Studies	1	2	1
Draft guideline	0	1	0
Tenders	2	0	4
Regulated Sectors	4	1	0
Other	3	5	4
TOTAL	27	34	29

Source: Promotion and Research Unit

127. Below, the detail of the opinions issued during the year 2022:

Table 10. Opinions on regulations, draft regulations and draft laws issued by COPROCOM 2022

Opinion N°	SUBJECT	RESULT
01-2022	Bill No. 22,762 "Law to Promote Competition in the Drug Market".	Legislators were recommended to archive <u>Bill of law No. 22,762</u> for presenting important shortcomings from the point of view of Competition Law and Efficient Regulation.
02-2022	Opinion regarding competition and free competition of professional services in Costa Rica, based on the " <i>Study on Competition and Free Competition in Professional Services of Costa Rica</i> ".	The opinion together with the complete study, accompanied by an explanatory letter, were sent to the Governing Council of that time (Carlos Alvarado Administration 2018-2022). This documentation was sent along with a copy to the Federation of University Professional Associations of Costa Rica and the National Council of Rectors. The current Government promoted a bill for the liberalization of professional service fees.
03-2022	Consultation carried out by the Technical Secretariat of the Budgetary Authority (STAP) on Opinion No. 025-2021 dated October 7, 2021, issued by COPROCOM.	The consultant was reminded that Law No. 9736, does not exempt any subject or agent from its scope, and it applies to all economic agents whose actions have effects in Costa Rica. Therefore, the company in question is subject to the competition regime.
04-2022	Draft law on preventive measures in contractual activity promoted by the Ministry of Public Works and Transport and its decentralized bodies with instrumental legal personality.	The consultant was given a response, indicating that it is not the responsibility of COPROCOM to determine whether the bill complies with the terms of the country's legal framework. Regarding competition law, it was reiterated that requirements imposed on public procurement that restrict access to participants in the bidding process must be justified in the public interest.
05-2022	Substitute text to bill No. 22,206 called "National Digital Literacy Program". Administrative File No. 013-2022-C.	The query was answered, and recommendations were made to the Executive Branch with improved wording to ensure that the principles of competition and competition and free competition, which are the main elements governing administrative contracting in the country, are guaranteed.
06-2022	Amendment to Regulation No. 37045 to Law No. 8220, Law on Protection of Citizens from Excess Administrative Requirements and Procedures.	The Ministry of Economy, Industry and Trade (MEIC) was informed that the text of the proposal does not seem to violate the principles of defending competition and free competition, and therefore it was recommended to continue with the processing of the comprehensive proposal for the necessary regulatory reform.
07-2022	Consultation on prior notification for transfer of credit billboard of the Chamber of Banks and Financial Institutions.	It was indicated that COPROCOM has the power to hear and clarify queries on mergers, provided that all the information necessary for their respective analysis is provided by the notifying economic operators. Similarly, what is determined within the regulated entities, CONASSIF or SUGEF, in relation to criteria or terms specific to their activity or line of business, need not be applicable to COPROCOM's assessment of a merger, which is made from the perspective of competition law.
08-2022	Substitute text of Bill No. 22 279 "Incorporation of the figure of the Homologation of Phytosanitary Registrations of Agrochemicals from countries that are part of the Organization for Economic Cooperation and Development (OECD) with phytosanitary standards equal to or superior to those of Costa Rica".	Favorable opinion was issued regarding Bill of law No. 22,279 and drafting suggestions were made to articles 6, 10 paragraph 3) and 11 paragraph 2) of the bill.

09-2022	Criterion requested by the Directorate of Regulatory Improvement regarding the proposed regulation called "Comprehensive Reform to Executive Decree No. 28018: "Regulation to the Law on the Regime of Relations between Producers, Processors and Exporters of Coffee".	Several recommendations were issued regarding the wording of the proposal, so that the regulations issued do not include unnecessary restrictions that exceed the provisions of Law No. 2762, to the detriment of competition and free competition in the market.
010-2022	Consultation of the Ministry of Finance in relation to an extension to a COPROCOM criterion on the competition regime of the National Liquor Factory (FANAL) and is exempt from the Fiscal Rule.	A series of recommendations were made for FANAL to accredit the activities in which it is competent.
011-2022	Consultation related to direct contracting between the National Institute of Statistics and Censuses (INEC) and the Technological Institute of Costa Rica (TEC).	Recommendations were issued to the consultant and related institutions. Likewise, the limitation to effective competition on public procurement was reiterated as a result of the exception contained in paragraph c) of Article 2 of Law No. 7494, as well as the limitation to the principle of competitive neutrality by establishing unjustified advantages for public entities compared to the private sector.
012-2022	Consultation related to a request for tender of the Judicial Power.	A recommendation was made indicating that the requirements established in the request for tender constituted an unjustified barrier to entry for the participation of other bidders under equal security conditions. Such requirements meant that only one company could be awarded, which could affect the purchase prices of the product. Similarly, such requirements violated the principle of equality and free competition, established in paragraph 5) of the Law on Administrative Contracting, a situation that, being promoted in this case by a public body, such as the Judiciary, must be given special attention, to prevent the aforementioned actions and their consequences from continuing to occur in the domestic market.
013-2022	Public consultation corresponding to a reform to Executive Decree No. 38884-MEIC, a rule that establishes the prices that govern the purchase and sale of rice at all levels of marketing.	A series of recommendations were made to the Executive Branch to repeal the articles that prevented merchants from making offers or promotions with the product; Likewise, the recommendation to eliminate the price regulation of all grain qualities was reiterated.
014-2022	Consultation on alleged tax discrimination; specifically in the case of iron and steel rods.	It was recommended to the Minister of Finance: A. To eliminate the application of the special system of determination and payment of the tax at the factory and customs level, to steel rod for construction, due to the consequences it has for competition in the market. B. Review whether the application of the special system to other products is still justified, in order to eliminate the possible distortions that its implementation may be generating in competition and free competition in other markets.
015-2022	Consultation raised on alleged barriers to entry in public procurement, established in Executive Decree No. 42709-H-MEIC-MTSS-MINAE-MICITT, entitled " <i>Measures to Encourage the Participation of Companies, SMEs and Social Economy Companies in Public Procurement, According to Location and Sustainability Criteria</i> ".	It was recommended to the Executive Branch the need to repeal Executive Decree No. 42709-H-MEIC-MTSS-MINAE-MICITT and if necessary, urged to propose new regulations that achieve the public policy objectives while evaluating the impact of the regulation competition dynamics beforehand. It was reiterated that the objective of public policy should be a response to an identified problem, for which different options were considered in order to determine the one that best serves the intended purpose pursued while being the least restrictive for competition.

016-2022	Criterion on the structure of the rice market, requested by the Deputy Minister of the Ministry of Economy, Industry and Trade.	It was reiterated that the regulation of rice prices was justified in a situation of exception, that is, low productivity and high costs in the sector, a justification that, as COPROCOM has repeatedly pointed out, does not comply with the provisions of the applicable regulations, since it is not a circumstance of force majeure. shortage or abnormal condition, and it is not temporary either, since it has been in force for more than seven years.
017-2022	Legal Criterion Application of Article 6, subsection B) of Title IV of Law No. 9635, Case: Empresa Banprocesa S.R.L.	Recommendations were issued to the Ministry of Finance on the criteria to be considered to determine whether Banprocesa is subject to the exception to the fiscal rule dictated by Article 6 (b) of Law No. 9635.
018-2022	Draft Law No. 23254 " <i>Promotion of the Cane Distillates Industry</i> ".	It was reiterated that COPROCOM supports initiatives that allow for the opening of the State monopoly on <i>aguardiente</i> (spirits), alcohol and all alcoholic beverages prepared in the country, as there is no longer a public policy justification for maintaining the current regulations, in addition to the economic harm it entails for Costa Rican companies that require the product as an input. The bill of law is still in the legislative process and COPROCOM was asked to hold a hearing with the Legislators.
019-2022	Query raised by the Costa Rican Chamber of Construction, related to: "the situation in which the United Nations Office for Project Services Units (UNOPS) operates in the country".	It was recommended to the Governing Council that the position of COPROCOM be considered, so that the principles of competition and free competition prevail in administrative procurement.
020-2022	Consultation raised by the Costa Rican Chamber of Construction, related to: "Competition problems in the regulation of subcontractors in public procurement regulations".	It was recommended for the Ministry of Finance to evaluate the possibility of incorporating in the Regulations to the Public Procurement Law, No. 9986, a definition of <u>subcontractor</u> , as well as a procedure to prove the shortage of bidders and that criteria be established to determine what is meant by a limited number of subcontractors.
021-2022	Bill No. 21.171. Addition of a final paragraph to Article 2 and a subparagraph (n) to Article 12 of the Law on the Promotion of Competition and Effective Consumer Protection, Law No. 7472 of 19 January 1995 and amendments thereto. Prohibition of Discrimination in Gender-Based Sales Prices.	It was recommended for Legislators to archive the bill of law contained in file No. 21,171, because it contained serious technical errors that, in addition, did not allow to attain the objective intended by the norm. The bill was withdrawn from the legislative process.
022-2022	Consultation on non-application of prior control of mergers - STEIN HOLDING GROUP LLC. °	The respective criterion was issued.
023-2022	Draft Law No. 23.234 " <i>Law on the Promotion and Promotion of Competition in the Medicines Market</i> ".	Drafting recommendations were issued, as well as the deletion and modification of some articles of the draft. It is currently in the legislative process.
024-2022	Criterion requested by the Minister of Economy, Industry and Commerce of the Bill <i>Partial Reform of the Commercial Code, on Brokers or Intermediaries</i> .	A recommendation was made to archive the proposal since there seems to be no justification for the need to regulate activities that have not been regulated to date. The proposal, at least, does not provide one. Furthermore, the regulation of the activity of brokers and intermediaries is contrary to the vision that COPROCOM has promoted in relation to the regulation of professional services.
025-2022	Draft Law No. 23 198 " <i>Law on the Modernization of the Regulation of Services, Reform of the Law on the Public Services Regulatory Authority (ARESEP), Law No. 7593 of August 9, 1996</i> ".	Favorable criteria were issued regarding the project submitted for consultation and recommendations for improvement in the drafting of said project are issued.
026-2022	Response to the letter AL-FPUSC-MAP-OFI-149-2022 of the Office of Deputy Melina Ajoy, on a possible economic merger in the public transport market.	The consultation was transferred to the Technical Body of COPROCOM, in order to determine whether an economic merger had taken place that should have been notified in accordance with Law No. 9736.

		Likewise, it was pointed out that COPROCOM is the specialized technical body that is empowered to identify whether a merger poses risks to the competition and free competition process, due to its possible effects on the market.
027-2022	Project File No. 23110, " <i>Law of the Collaborative Private Transport Service</i> "	A favorable opinion is issued, indicating that the project is not considered to generate limitations or distortions to competition that harm the users of the services. It was also recommended to revise the definition of "collaborative private transport services".
028-2022	Criteria on the part of ASOFINTECH in relation to the reforms issued by the National Council for the Supervision of the Financial System, to articles 20 and 21 of the " <i>Regulations for the registration and deregistration before SUGEF, of the obligated subjects that carry out any or some of the activities described in articles 15 and 15 bis of the Law on narcotic drugs, psychotropic substances, drugs of unauthorized use, related activities, money laundering and financing of terrorism</i> " (hereinafter, "Law 7786").	COPROCOM issued a recommendation to CONASSIF and SUGEF indicating the need for regulations to adhere to principles and postulates of efficient regulation, in line with international best practices and experience gained in other jurisdictions, to promote wide spaces for competition and free competition, alongside the sectoral regulation that is pertinent and necessary to achieve legitimate objectives in the interest of the public. Likewise, it was recommended to reconsider the advisability of establishing a longer timeline and gradual implementation for Fintech companies, in terms of compliance with the two requirements set forth in circular SGF-0479-2022.
029-2022	Criterion related to Bill No. 23357 " <i>Law to eliminate the fixing of mandatory fees for professional services, amendment of Law No. 7472 "Law on the Promotion of Competition and Effective Consumer Defense", of December 20, 1994 and its Amendments</i> ".	COPROCOM issued a favorable opinion regarding the bill of law, as it is considered to be a step in the right direction in terms of regulating professional services in the country, by eliminating one of the major distortions to competition and free competition in the market, that is, the imposition of minimum fees for the provision of professional services. For COPROCOM, these fees limit the autonomy of professionals, encourage collusion, limit citizens' access to services and support higher fees that, in addition, increase the cost of a large number of goods and services that use such services as inputs.

Source: Archives of the Technical Body

3.1.2. SUTEL

128. In 2022, SUTEL issued several opinions on proposed bills, sectoral regulations, and public tenders, most of which were issued *ex officio*. In each case, SUTEL analyzed whether the proposal consulted had the potential to restrict competition.

129. The following opinions were issued in 2022:

Table 11. Costa Rica: Opinions on regulations, bills and others issued by SUTEL. 2022

SUTEL			
Number	Matter	Type of Intervention	Result

RCS-284-2022 (09495-SUTEL-SCS-2022)	Opinion regarding competition matters on the mutual agreements signed between ICE-RACSA and the Executive Branch for the recovery of a frequency segment of the 3.5 GHz band.	Ex officio action.	Several recommendations were made to MICITT: recover the unused and underutilized spectrum in the 2600 MHz band, selecting an appropriate band recovery mechanism according to Law 8642; the recovered spectrum in the 2600 MHz bands should be available in the short term in market terms; conduct a public tender for the allocation of spectrum in order to meet the demand on the short-term, including low, medium and high bands, in the provision of 5G services; carry out the necessary actions to prevent a particular operator from having more spectrum than the one technically required for the provision of IMT services, initiating for this purpose the review of the spectrum adequacy of ICE and its companies, as well as incorporating a bidding process for IMT-2020 networks and the necessary public policy conditions to avoid concentration of spectrum. However, MICITT did not fully endorse the recommendations made by SUTEL.
Agreement 015-058-2022 (07417-SUTEL-SCS-2022)	Report on the Protection of Personal Data Act, file 23.097 draft	Action by request.	A consultation regarding the proposed draft was addressed, determining that its content does not have the potential to generate barriers to competition amongst market agents. However, it was indicated that a future regulation of this act could generate barriers to market competition, particularly in relation to the issue of portability of personal data. Therefore, it was recommended to take into consideration the elements indicated in some points of the report made. Additionally, it was stated that the bill could have the potential to affect the effective application of the Sectoral Competition Regime in Telecommunications processes, therefore it was recommended to adjust certain articles. The Legislative Commission partially accepted SUTEL's recommendations.
Agreement 006-073-2022 (09703-SUTEL-SCS-2022)	Opinion regarding consultation on the access deficit of the Costa Rican Electricity Institute (ICE)	Action by request.	A recommendation was made in order to include a series of elements that should be included in public policy actions.
Agreement 035-070-2022 (09205-SUTEL-SCS-2022)	Opinion regarding the specifications of public procurement 2022CD-000173-0002100001 for contracting purposes of "Point-to-point communication service and internet for CFP, CE, UR towards data centers" services by the National Institute of Learning (INA).	Ex officio action.	The recommendation stated that the contractual activity exception established in articles 2 section c) of the Administrative Contracting Act and article 138 of its Regulation which favors public institutions in tender documentation 2022CD-000173-000210000 should be eliminated, with the objective of favoring free competition and recommended instead, an open bidding process to be carried out allowing any potential bidder interested in providing the services independent on their public law or private company status. However, INA rejected the recommendation and provided its reasons for doing so.
Agreement 014-084-2022 (11251-SUTEL-SCS-2022)	Report on the Draft Regulation of the "Incentives and Promotion of Telecommunications Infrastructure Deployment Act", specifically on the procedures and technical specifications of telecommunications infrastructure.	Ex officio action.	It was concluded that the proposed regulation had the potential to create barriers in competition amongst market agents, therefore, a recommendation was made in order to adjust the wording and elimination of one article of the draft. Subsequently, approaches were made with MICITT to determine the scope of the recommendations issued by SUTEL in order to implement them in the regulatory proposal.

Official Letter 03757-SUTEL-CS-2022 Agreement 016-035-2022 (04011-SUTEL-SCS-2022)	Opinion regarding the observations made in public consultation procedure of Regulation to Law No. 9986.	Ex officio action.	It was concluded that the proposed regulation had the potential to generate barriers to competition amongst market agents, therefore recommending modifying wording of specific articles, as well as the addition of new sections.
Agreement 013-065-2022 (08528-SUTEL-SCS-2022)	Opinion report evaluating from the competition perspective the Regulation of Monte Real Residential Vertical Condominium	Ex officio action.	It was concluded that the aforementioned regulation had the potential to create barriers to competition and favor the imposition of entry barriers in detriment of the residents, therefore it was recommended to the condominium administration and assembly the elimination of articles that created barriers. Likewise, the General Directorate for Competition of SUTEL was instructed to carry out an assessment from the competition perspective of condominium regulations built in the last two years, in order to determine the recurrence of possible clauses that limit competition in the telecommunications market.

4. APPEALS BY COMPETITION AUTHORITIES

4.1. General resources (current amounts and change from previous year):

4.1.1. Annual budget (in your currency and USD)

COPROCOM

130. The annual budget of COPROCOM for 2022 was ₡ 708,641,188 (seven hundred and eight million six hundred forty-one thousand one hundred and eighty-eight colones), which is equivalent to US \$ 1,095,272 (one million ninety-five thousand two hundred and seventy-two dollars). It should be noted that this amount accounted for approximately 28.88% of the budget established in Law No. 9736.¹²

131. COPROCOM continues to make efforts to obtain the amount of budget necessary to meet the obligations imposed by the new regulations; pointing out to the Ministry of Finance that, although the economic crisis that the country is going through is understood, it is essential to obtain these resources in order to meet the duties imposed by the current law.

SUTEL

132. SUTEL's annual budget for 2022 was ₡24,793,642.133 (equivalent to US\$42,340,316); of ¹³ that amount, the budget assigned to the General Directorate for Competition was ₡ 664,928,163.00 (equivalent to US \$ 1,135,511).

¹² Considering an average annual exchange rate by 2022 of 647 colones per US dollar. Source: <https://gee.bccr.fi.cr/indicadoreseconomicos/Cuadros/fmVerCatCuadro.aspx?idioma=1&CodCuadro=%205790>

¹³ Considering an average annual exchange rate of 585.58 colones per US dollar.

4.1.2. Number of employees (person-years):***COPROCOM***

133. In 2022, COPROCOM experienced a decrease in its staff due to the resignation of several officials, which led to only thirteen professional positions being filled across its three operating units; in addition to its three commissioners appointed full-time.

134. It should be noted that it was not possible to hire new staff for the vacant positions, due to a lack of budgetary resources, since these positions must be converted to the new salary regime of COPROCOM at the time they become vacant, in accordance with Article 19 of Law No. 9736.

SUTEL

135. In 2022 SUTEL's staff was composed of 123 people, nine of which work in the General Directorate for Competition: five of them being lawyers, three economists and one engineer.

136. It should be noted that during the year 2022, two new positions were filled as established in the restructuring proposal presented by SUTEL to the Board of Directors of ARESEP through agreement 009-014-2020, one corresponding to an economist and the other corresponding to a lawyer.

4.1.3. Human resources (person-year) applied to: enforcement against anticompetitive practices, review and compliance of mergers, defense efforts.***COPROCOM***

137. For the year 2022, COPROCOM had three people dedicated to mergers analysis, four people dedicated to promotion and research, three people dedicated to the Instruction Department and two officials in the Technical Body's Directorate. It also had three full-time commissioners who make up the Superior Body.

SUTEL.

138. During 2022, there were a total of five people dedicated to the investigation special procedure stage, three people dedicated to work on the instruction stage and one official who holds the position of Director of the General Directorate for Competition. However, although there is specialization according to the special procedure stages amongst personnel, when required, the staff can address cases of mergers, as well as promotion and advocacy issues. Regarding the tasks associated with the special competition procedure, concerning the stages of preliminary investigation and instruction, the independence and separation of duties is required by Law No. 9736 and is maintained amongst the officials.

4.2. Period covered by the above information.

139. The above information covers the actions carried out from January to December 2022.

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

5.1. Market research

5.1.1. COPROCOM

Study on professional colleges

140. The “*Study on Competition and Free Competition of Professional Services in Costa Rica*” was approved by Agreement Number Four of Ordinary Session No. 50-2021, dated December twenty-two, 2021. Its purpose was to analyze the restrictions on competition and free competition that characterize the provision of professional services in the country and to evaluate the effects on social welfare that derive from such restrictions.

141. With respect to the progress made in the implementation of the recommendations of the Study on Competition and Free Competition of Professional Services in Costa Rica, by the authorities in charge, it is relevant to indicate the following:

1. After analyzing the aforementioned study, COPROCOM issued on January nineteenth, 2022, Opinion No. 02-2022, which summarizes the conclusions and recommendations of the analysis carried out. https://www.coprocom.go.cr/publicaciones/comunicados/OP-02-22_ColegiosProf_240222.pdf
2. This opinion, together with the complete study, accompanied by an explanatory letter, were sent to the Governing Council of that time (Carlos Alvarado Administration 2018-2022) on the twenty-fourth of February, 2022. This documentation was sent with a copy to the Federation of University Professional Associations of Costa Rica and the National Council of Rectors.
3. On February twenty-eighth, 2022, COPROCOM issued a press release with recommendations addressed to the Executive Branch, a communiqué that was widely disseminated by the media, examples of this are:
 - a. <https://www.nacion.com/economia/consumo/coprocom-recomiendaeliminar-tarifas-minimas-de/QTDUCKXEKNFVXAHWLVIS6IFSZA/story/>
 - b. <https://elmundo.cr/costa-rica/coprocom-recomienda-eliminar-tarifasminimas-de-colegios-profesionales/>
 - c. <https://www.elfinancierocr.com/negocios/colegios-profesionales-aleganque-estudio-de/QBASE4XGUNFD7CG2BLXW276224/story/>
 - d. <https://www.elfinancierocr.com/negocios/coprocom-recomienda-alejecutivo-reformar-la/VLJHKSQPSBFEJOP6NW25RQT7FE/story/>
 - e. <https://www.crhoy.com/nacionales/coprocom-pide-eliminar-tarifasminimas-y-limitar-obligatoriedad-en-colegios-profesionales/>
 - f. <https://www.diarioextra.com/Noticia/detalle/471258/instan-a-eliminartarifas-m-nimas-y-colegiatura-obligatoria>
4. The Governing Council agreed to set up a working group with MIDEPLAN, the MEIC and the Attorney General's Office (PGR in Spanish) to analyze the study carried out by COPROCOM and submit a report to that Council. The foregoing as stated in the tenth article of the minutes of the ordinary session number two hundred and four of the Governing Council. It is not known whether the working group was

actually integrated and, if so, whether it presented results prior to the conclusion of the Administration.

5. The new Government (Chaves Administration 2022-2026) took up the recommendations of the study and decided to prioritize the issue of minimum fees for professional associations. Hence, in August it took out to public consultation 11 proposals for executive decree in order to eliminate the minimum fees of the associations of: Lawyers, Therapists, Chemical Engineers and related professionals, Geologists, Public Accountants, Engineers and physical architects, Microbiologists and clinical chemists, Biologists, Physicists, Chemists and Nutritionists.
6. On September 7, 2022, COPROCOM held the Virtual Workshop FUTURE OF THE REGULATION OF PROFESSIONAL SERVICES IN COSTA RICA, with the participation of representatives of the OECD, the National Commission of Markets and Competition of Spain (CNMC) and the Economic Prosecutor's Office of Chile (FNE), who shared their experience regarding the regulation of professional services. The full workshop is available at: <https://www.youtube.com/watch?v=IYWOCgw65UY>
7. On the fourteenth of September 2022, the President of the Republic, Rodrigo Chaves Robles, announced the signing of several executive decrees for the elimination of the minimum rates of some professional associations.
8. However, the press has announced the suspension of several of these decrees in the face of precautionary measures requested before the courts of justice by the associations of microbiologists, engineers and architects, therapists, and lawyers.
9. On the twentieth of September 2022, the Executive Branch sent to Congress for study a bill entitled "LAW TO ELIMINATE THE FIXING OF MANDATORY FEES FOR PROFESSIONAL SERVICES, REFORM OF LAW NO. 7472 "LAW ON THE PROMOTION OF COMPETITION AND EFFECTIVE DEFENSE OF THE CONSUMER", OF DECEMBER 20, 1994 AND ITS REFORMS"; project to which the file number 23.357 was assigned.
10. As of December 2022, the bill was being analyzed by the Legal Affairs Commission and consulted with different entities including Commission to Promote Competition, Ministry of Economy, Industry and Trade, Ministry of Finance, Federation of University Professional Associations, Federation of Professional Associations, UCR, UNA, Technological Institute, UNED, National Technical University, Supreme Court of Justice, Association of Free Consumers, Association of Consumers of Costa Rica. In this regard, COPROCOM issued COPROCOM OPINION No. 29-2022, of the fourteen hours and two minutes of December eight, 2022.
11. On the twenty-fifth of January, 2023, the Superior Body of COPROCOM was summoned to a hearing by the Committee on Legal Affairs in order to address the doubts of Legislators in relation to the proposed law.

5.1.2. SUTEL

Market study regarding access to shared telecommunications infrastructure in business buildings in condominium regime and properties for commercial use, that have shared facilities necessary for the provision of telecommunications services.

142. The purpose of this study is the analysis of access to shared infrastructure that allows the development and deployment of networks and the provision of telecommunications services, including: poles, ducts, gutters, access rooms to internal networks, general distribution boxes, etc., in the context of business, commercial, corporate, office centers, free trade zones and other related properties (functional dimension), or those that while not being subject to the Condominium Property Regime, as defined in Law 7933, have shared facilities necessary for the provision of telecommunications services nationwide.

143. Thus, the objective of this study is to determine if there is existence or absence of obstacles, barriers and/or distortions to competition regarding the access to shared telecommunications infrastructure in business condominiums and commercial properties that have shared facilities.

144. The administrative resolution RCS-266-2018 establishes that access to essential facilities is a fundamental element required for operators to enter the market, expand their installed network capacity, and develop better coverage of their networks. SUTEL's records on the interconnection and access regime procedures, indicated a potential execution of business practices that deviate from competition, regarding access to essential facilities for network deployment and/or provision of telecommunications services in the context of business condominiums and related commercial facilities. These practices could be materialized through access denials, irregular charges, and exclusive agreements, which had the possibility to limit access to networks and/or telecommunications services towards for economic agents.

145. This study was approved by Sutel's Council agreement 024-045-2022 of June 24, 2022¹⁴, determining that in the analyzed market some situations not related to the competition process, have an impact on the access operators have to commercial properties, containing shared facilities necessary for the provision of telecommunications services, including:

- Insufficient dimensions or lack of ductwork to the end customer and telecommunications rooms.
- Insufficient or no documentation of the existing infrastructure.
- Poor state of the infrastructure or saturation due to poor deployment practices.
- Saturation due to the number of existing networks.
- Obtaining permits for the use of infrastructure and network deployment.

146. Thus, although the study did not identify competition issues that would prevent the market from functioning properly, given the situations identified, it was considered as a good practice to promote competition in this market segment, carrying out additional advocacy actions by SUTEL, including workshops to train on best practices, develop,

¹⁴ Available at the following link:

https://www.sutel.go.cr/sites/default/files/estudio_mercado_condominios_empresariales.pdf

publish and disseminate informative documents on the subject and maintain constant monitoring of that market.

Market study regarding the public procurement of telecommunications services.

147. The purpose of this study is the analysis of the public procurement procedures used in order to obtain telecommunications services, that contains a specialized commercial subset in the national telecommunications services industry, which serves and supplies the Costa Rican State's demand for telecommunications goods and services at national level.

148. The analysis had the purpose of determining the existence or absence of obstacles, barriers and/or distortions that are contrary to competition in the public procurement processes of telecommunications services, as well as the supply by operators and/or service providers active within the Costa Rican jurisdiction, in response to the government's demand.

149. This study was approved by Sutel's Council agreement 049-075-2022 of November 10, 2022, including a series of recommendations:¹⁵

"1. To recommend the Executive Branch, through the General Directorate of Asset Management and Administrative Contracting of the Ministry of Finance, to issue a policy of competitive neutrality in public procurement, with guidelines for applying the direct exception contained in Article 2, subsection c, of the Law on Administrative Contracting, and when applicable, Article 3, subsection b, of Law 9986 with the aim of making more rigorous use of this figure in the procurement of telecommunications services.

2. Recommend to the Comptroller General's Office that, within the framework of the exercise of the competences that have been assigned to the control body in matters of administrative contracting, it takes into consideration the elements exposed by SUTEL in this study."

150. On September 16, 2022, the Division of Administrative Contracting of the General Comptroller's Office and, on October 14, 2022, the General Directorate of Asset Management and Administrative Contracting of the Ministry of Finance responded via email (NI-14106-2022 and NI-154-202 respectively) indicating their willingness to comply with the recommendations given by SUTEL to promote free competition in the public procurement processes of telecommunications services.

6. OTHER RELEVANT ACTIONS BY COMPETITION AUTHORITIES

6.1. Cooperation agreements with other Competition Authorities

6.1.1. COPROCOM

151. During 2022, COPROCOM has had an active participation in:

1. The Organization for Economic Co-operation and Development (OECD)
2. The Central American Network of National Competition Authorities (RECAC)
3. The International Competition Network (ICN)

¹⁵ Davailable at the following link:

https://www.sutel.go.cr/sites/default/files/informe_estudio_mercado_compras_publicas.pdf

4. The Central American Competition Committee
 5. The Competition Agencies Group of America (GrACA)
152. Cooperation agreements signed with foreign authorities:
153. In 2022, COPROCOM signed a technical cooperation agreement with the Federal Institute of Telecommunications of Mexico (IFT).¹⁶

6.1.2. SUTEL

154. In year 2022 a cooperation agreement was approved with the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) (agreement 005-052-2022 of July 21, 2022 of the SUTEL Council).¹⁷

155. Cooperation agreements are also currently being negotiated with Peru's sectoral competition authority in telecommunications, the Supervisory Agency for Private Investment in Telecommunications (OSIPTEL). As well as with the Commission for the Promotion and Defense of Competition of Honduras.

6.2. Other actions in the field of promotion and advocacy for Competition

6.2.1. SUTEL

Competition guidelines for joint deployments of telecommunications networks.

156. These guidelines aim to generate a safe area of action before signing cooperation agreements for joint ventures, co-investment, co-deployment, or other forms of collaboration between operators, seeking to explain how certain types of agreements between competitors should be considered regarding competition policy in telecommunications.

157. The Guidelines were approved by Sutel's Council agreement 050-075-2022 of November 10, 2022, and amongst the main aspects detailed are the following:¹⁸

"While each agreement between competitors is different according to its nature, the scope in which it is subscribed, and the objective it pursues, allowed agreements must comply with a series of conditions to ensure no restrictions for competition, such as:

- *Not having as a purpose to engage in any anticompetitive practices defined in article 53 of Law 8642.*
- *Not having as their purpose or effect the undue displacement of other operators or service providers in the market, the substantial impediment of access or the establishment of barriers to entry or exclusive advantages in favor of one or more persons.*
- *Seeking the creation of efficiencies or pro-competitive effects in the market.*
- *Being indispensable, in such a way that only through the realization of the agreement can efficiencies be obtained that cannot be achieved individually.*

¹⁶ The agreement is approved by both institutions, only pending the respective signature.

¹⁷ Available in:

https://www.sutel.go.cr/sites/default/files/convenios_contribuciones/convenio_con_sutel.pdf

¹⁸ Available at the following link:

https://www.sutel.go.cr/sites/default/files/lineamiento_materia_competencia_despliegues_conjuntos_redes.pdf

- *There is an absence of less restrictive mechanisms to competition that allow the objectives of the agreement to be achieved.*
- *Not promoting the exchange of information that facilitates collusion in the market.*
- *Pass on the benefits of the agreement to end-users; in agreements which may in some way restrict competition, the resulting efficiencies must compensate for the restrictive effects and must be transferred in a non-transitory manner as economic incentives to end-users.*
- *Do not generate the exclusion of other bidders in a substantial way, by causing an anticompetitive closure of the market that limits access to relevant inputs or services for other operators".*