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

## Annual Report on Competition Policy Developments in Costa Rica

-- 2023 --

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

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## *Costa Rica*

### 1. Changes to Competition Laws and Policies, Proposed or Adopted

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

1. There were no additional legal provisions to disclose in 2023.

##### *1.1.1. Other relevant measures, including new guidelines.*

##### *1.1.2. Regarding the development of certain instruments to implement Act 9736.*

2. As part of Costa Rica’s accession process to the Organization for Economic Cooperation and Development [OECD], the country made a commitment –among others– to effectively implement, and comply with, the “Strengthening of Costa Rican Competition Authorities Act”, Act 9736.

3. To that effect, transitional provision XII of Act 9736 states:

4. “[...] *the competition authorities shall have up to twelve months, as of the conformation date of the Superior Body of the Commission for the Promotion of Competition [COPROCOM], to develop, jointly or separately, the following technical guidelines: analysis of anti-competitive practices, analysis of concentrations, penalization procedures of the competent competition authorities, and compliance programs. In addition, within said time frame, COPROCOM shall be required to establish the relevant coordination mechanisms with the following sector regulators: the National Council for Supervision of the Financial System [CONASSIF as per its acronym in Spanish] and the Council on Public Transportation [CTP as per its acronym in Spanish]*”.

5. A strategic Road Map was developed, with the objective of implementing the measures set forth in the aforementioned transitional provision, that outlines the steps that the Competition Authorities of Costa Rica must follow between 2020 and 2023; this Road Map consists of three main pillars that the Authorities are expected to meet. The first of these pillars concerns the strengthening of the regulatory framework that governs the two relevant Competition Authorities. It includes the development and dissemination of a series of technical regulations, handbooks and guidelines.

#### 1.2. A.1 COPROCOM instruments.

##### *1.2.1. Instruments developed with COPROCOM resources.*

6. In 2023, COPROCOM developed and made progress on the following instruments:

##### *Regulations for the Preparation of Cooperation Agreements and Conventions*

7. The regulations describe the procedure that must be followed to prepare, sign, register, execute and monitor the inter-institutional collaboration agreements, and the international technical cooperation agreements, that the Commission for the Promotion of Competition must enter into with public and private entities, both domestic and foreign, and with international organizations. The above will allow COPROCOM to fulfill its functions and standardize the procedures and criteria that contribute to the achievement of institutional objectives and goals, in accordance with the definition outlined in Article 25

of the “Strengthening of Costa Rican Competition Authorities Act”, Act 9736. This was ratified in Ordinary Session No. 27-2023, held by the Superior Body of COPROCOM on July 20th, 2023, and was published in the official gazette “*La Gaceta*” No. 209 on November 10th, 2023.

*Instruments developed with IDB resources on behalf of COPROCOM*

8. As part of project CR-1212, the “Competition Authorities Strengthening Program”, which is sponsored by the Inter-American Development Bank, the instruments listed below were developed and disseminated in 2023 in pursuance of the desired outcomes defined in the Implementation of Act 9736 Road Map, namely:

*Technical regulation for collecting fees derived from concentration control procedures*

9. This regulation describes the methodology that COPROCOM must follow to calculate the fee that is charged for the process that must take place to exert control over economic concentrations, in accordance with the principle of providing a service at the minimum possible cost in each stage of the process, and in conformity with the provisions set forth in Article 17, paragraph c), of Act 9736.

10. As per Agreement #6, ratified in Ordinary Session No. 08, which was held by the Superior Body of COPROCOM on March 2nd, 2023, the final text of the “*Technical Regulation for Implementing the Fee Calculation and Collection Methodologies derived from Concentration Control Procedures*” was approved.

11. Similarly, as per Agreement #10, ratified in Ordinary Session No. 10-2023, which was held by the Superior Body of COPROCOM, it was agreed that the “*Technical Regulation for Implementing the Fee Calculation and Collection Methodologies derived from Concentration Control Procedures*” would be published in the Official Gazette “*La Gaceta*”, so as to comply with the provisions that were set forth in the implementation plan of Act 9736. The charging of fees, however, was suspended until there are sufficient human and technological resources available to implement a charging process for the notification of economic concentrations.

*Guidelines for conducting market research studies*

12. These guidelines outline the key aspects to consider when selecting and developing market research studies, and how to implement and evaluate the results thereof.

13. This was ratified as per Agreement #8 in Ordinary Session No. 25-2023, held on July 6th, 2023, and subsequently published in Scope No. 215 of the Official Gazette “*La Gaceta*” No. 204 on November 3rd, 2023.

*Guidelines for unilateral conduct and vertical agreements*

14. These guidelines define the criteria that COPROCOM will use to evaluate cases that involve relative monopolistic practices, regardless of whether such cases were opened as a result of an official sanction or due to a notification filed by any individual or legal entity.

15. The guidelines have been completed and no comments or observations were made as part of the public inquiry process. The only pending tasks are the publication of the guidelines in the Official Gazette “*La Gaceta*”, and the organization of workshops for COPROCOM officials and stakeholders, which are expected to take place on May 10th, 2024.

*Guidelines for economic concentrations (notification and analysis)*

16. The purpose of these guidelines is to provide information regarding the concepts, standards and procedures involved in the prior notification of economic concentrations, and to outline the general approach that COPROCOM will follow to analyze concentrations.

17. The guidelines have been completed; the only pending task is the publication of the guidelines in the Official Gazette “*La Gaceta*”. Internal workshops were held in November 2023 for the Technical Body and the Superior Body. External workshops were held on March 15th, 2024, for the public stakeholders.

**1.3. A.2 SUTEL instruments.**

18. In order to fulfill the commitments undertaken in the aforementioned strategic Road Map, it was decided that SUTEL and Inter-American Development Bank [IDB] resources would be used as follows:

*1.3.1. Instruments developed with SUTEL resources.**Guidelines for the application of fines imposed for the infringement of competition law.*

19. The general objective of these guidelines is to provide economic agents information on the method through which SUTEL determines the amount to charge for fines imposed due to infractions, under its jurisdiction, of which SUTEL is aware; and to, therefore, anticipate the manner in which SUTEL will assess the circumstances, determine the weights for criteria, and evaluate the context of a particular behavior, for the purpose of sanctioning said behavior. Additionally, these guidelines are intended to strengthen the application of other legal mechanisms stipulated in Act 9736, namely: the exoneration or reduction of fines, and the early termination of an investigation of a possible infraction due to an admission of guilt. Both of these mechanisms require a certain degree of precision and predictability, with respect to the way in which SUTEL calculates fines, in order to function optimally.

20. The guidelines were ratified through Agreement No. 026-046-2023<sup>1</sup>; this agreement was passed on August 3rd, 2023 by the Board of Directors of SUTEL<sup>2</sup>.

*1.3.2. Technical Regulations*

21. The “*Regulations on the Competition Law in the Telecommunications Sector*” address matters related to Chapter III, Title II, of the General Telecommunications Act, with respect to the sector’s competition regime, and similarly cover elements that, in the case of SUTEL, require regulating in accordance with the Technical Regulations of the Strengthening of Costa Rican Competition Authorities Act (Act 9736), and its Executive Regulations (Executive Decree 43305-MEIC).

22. From November 2021 and up to April 2023, the text of the Technical Regulations under Act 9736 had to undergo the necessary administrative process to obtain the approval

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<sup>1</sup> These guidelines were dependent on the provisions of the Technical Regulations established in Act 9736, which were approved in 2023 by the Board of Directors of the Public Utilities Regulatory Authority.

<sup>2</sup> The guidelines are available at the following link: [https://www.sutel.go.cr/sites/default/files/guia\\_de\\_imposicion\\_de\\_multas.pdf](https://www.sutel.go.cr/sites/default/files/guia_de_imposicion_de_multas.pdf)

of the Board of Directors of the Public Utilities Regulatory Authority [ARESEP as per its acronym in Spanish]. This came about on April 26th, 2023, via resolution RE-0075-JD-2023, which was later published in Scope No. 93 of the Official Gazette “*La Gaceta*” No. 90 on May 23rd, 2023<sup>3</sup>.

### ***1.3.3. Guidelines for the analysis of unilateral conduct and vertical agreements***

23. The purpose of these guidelines is to provide economic agents information and guidance on the analysis, investigation and possible sanction processes that may arise out of absolute and/or relative monopolistic practices when enforcing the procedures set forth in the Strengthening of Costa Rican Competition Authorities Act (Act 9736) and the General Telecommunications Act (Act 8642), with respect to the sector’s competition regime, and the Promotion of Competition and Effective Consumer Protection Act (Act 7472), and their respective regulations. As such, these guidelines were developed in an effort to make SUTEL’s decision-making process more predictable, without affecting its application on a case-by-case basis or the potential inclusion of complementary criteria that may be adopted in the future.

24. The guidelines were ratified through Agreement No. 008-071-2023; this agreement passed on November 28th, 2023 by the Board of Directors of SUTEL<sup>4</sup>.

### ***1.3.4. Guidelines for effective compliance programs***

25. The purpose of these guidelines is to provide information to network operators, and other service providers in the telecommunications sector, on how to effectively develop their compliance programs, ensuring that these are designed to promote compliance of the competition law by offering suggestions on the key aspects to consider during the development of such programs. On November 23rd, 2023, by way of Agreement No. 039-070-2023, the Board of Directors of SUTEL instructed the General Directorate of Competition [DGCO as per its acronym in Spanish] to submit the final version of the guidelines to the public inquiry process<sup>5</sup>. In compliance with the above, from November 27th, 2023, to December 15th, 2023, the final version of the guidelines was made available on SUTEL’s official website to abide by the public inquiry process.

26. In accordance with the internal scheduled timeline, the guidelines are expected to be officially published in 2024.

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<sup>3</sup> The aforementioned regulations are available at the following link: [https://www.sutel.go.cr/sites/default/files/normaticascompetencia/reglamento\\_regimen\\_sectorial\\_de\\_competencia\\_en\\_telecomunicaciones\\_alcance\\_93\\_la\\_gaceta\\_90\\_23-05-2023.pdf](https://www.sutel.go.cr/sites/default/files/normaticascompetencia/reglamento_regimen_sectorial_de_competencia_en_telecomunicaciones_alcance_93_la_gaceta_90_23-05-2023.pdf)

<sup>4</sup> The guidelines are available at the following link: [https://www.sutel.go.cr/sites/default/files/guia\\_de\\_analisis\\_practicas\\_anticompetitivas\\_0.pdf](https://www.sutel.go.cr/sites/default/files/guia_de_analisis_practicas_anticompetitivas_0.pdf)

<sup>5</sup> Article 22 of Act 9736 establishes that, prior to issuing a set of guidelines related in any way to competition law, said guidelines must first be subject to a public inquiry process. Furthermore, Article 27 of the Executive Regulations under Act 9736 establishes that said public inquiry process must abide by the provisions established in Article 361 of the Public Administration Act (Act 6227), and the provisions of the Protection of Citizens from Excessive Administrative Requirements and Procedures Act (Act 8220). This is also established in paragraph 35 of SUTEL’s Regulations on the telecommunications’ competition regime.

### ***1.3.5. Guidelines for ex-post analysis of a competition authority's enforcement decisions***

27. The general objective of these guidelines is to describe the methodology used for the ex-post analysis of SUTEL's interventions when attempting to enforce competition law in the telecommunications market. These guidelines aim to provide an instrument with which to evaluate the impact of SUTEL's interventions within the framework of its functions as the sector's competition authority, thereby enabling conclusions to be drawn with regard to the effectiveness of previous interventions, and providing instructions that promote knowledge as a pillar and key input for strategic decision making.

28. On December 14th, 2023, by way of Agreement No. 035-074-2023, the Board of Directors of SUTEL instructed the DGCO to submit the final version of the guidelines to the public inquiry process<sup>6</sup>. In compliance with the above, from January 19th, 2024, to February 9th, 2024, the final version of the guidelines was made available on SUTEL's official website to abide by the public inquiry process.

29. In accordance with the internal scheduled timeline, the guidelines are expected to be officially published in 2024.

### ***1.3.6. Internal manual for conducting inspections.***

30. The purpose of this manual is to provide SUTEL with a powerful tool to better understand the objective, scope and limits of the inspection functions vested in it by the applicable legislation, and to better understand the procedures that must be followed, and the safeguards that should be adopted, for satisfactory execution thereof.

31. Given that the manual is a document intended for SUTEL's internal use, an accompanying explanatory document was prepared, which is titled: "Guidelines for complying with SUTEL's unannounced inspections". The purpose of these guidelines is to provide information to network operators, and other service providers in the telecommunications sector, on how to comply with any unannounced inspection that SUTEL may be authorized to carry out in its capacity as the sector's competition authority. For further information, please refer to section 6.2, b) of this report<sup>7</sup>.

## **1.4. A.3. Instruments developed with IDB resources on behalf of the two Competition Authorities.**

### ***1.4.1. Guidelines for detecting collusive bidding schemes***

32. On July 22nd, 2021, by way of Official Notice No. CID/CCR/772/2021 (NI-9224-2021), and in furtherance of project CR-1212, the "Competition Authorities Strengthening Program", the IDB reported that they had allocated technical resources to meet the needs of SUTEL and COPROCOM with respect to the guidelines for detecting collusive bidding schemes; this technical cooperation project was formally approved by the IDB on October 20th, 2021.

33. SUTEL and COPROCOM jointly reviewed a first draft of the guidelines in January 2024. The project is, therefore, expected to be completed by the end of 2024.

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<sup>6</sup> Idem.

<sup>7</sup> The guidelines are available at: [https://www.sutel.go.cr/sites/default/files/lineamientos\\_de\\_actuacion\\_ante\\_las\\_inspecciones\\_no\\_nunciadas\\_de\\_la\\_sutel\\_0.pdf](https://www.sutel.go.cr/sites/default/files/lineamientos_de_actuacion_ante_las_inspecciones_no_nunciadas_de_la_sutel_0.pdf).

34. The purpose of these guidelines is to provide procurement officials information on how to mitigate the risk of collusion among bidders involved in a bidding and tendering process. It aims to achieve this objective by focusing on the design of bidding processes, and by collaborating with said procurement officials to identify patterns of collusion among bidders.

#### *1.4.2. Government proposals for new legislation.*

35. There were no other legal provisions to disclose in 2023.

## **2. Enforcement of Competition Law And Policies**

### **2.1. Enforcement actions taken against anti-competitive practices, including agreements and abuse of dominant positions.**

#### *2.1.1. Invitation to Bid [ITB] documents and agreements.*

##### *COPROCOM.*

36. Three preliminary investigations were opened concerning the public procurement market for pharmaceuticals and other medical supplies in 2023.

37. These three investigations were moved forward to the instruction stage, which is intended to systematize the actions required to prepare the special procedure for the decision stage so as to ensure that the case file is ready for the oral and private hearing held before the Superior Body, which resulted in the following outcomes:

38. Administrative Case File No. 022-2022, which pertains to an alleged collusive agreement in a bidding process conducted by the Social Security Administration of Costa Rica to procure professional pharmaceutical services related to the dispensing of pharmaceutical products intended for the Corporate Medicine and Mixed Medicine programs in metropolitan areas, currently remains in the instruction stage and evidence collection is ongoing.

39. It is worth noting that an investigation into road maintenance tenders was rejected during the instruction stage. This case remains open, however, and has been moved back to the preliminary investigation stage by the Superior Body without considering the merits of the case, in accordance with the provisions established in paragraph 58 of the Strengthening of Costa Rican Competition Authorities Act (Act 9736), in order to correct, if required, the special procedure as regards to the instruction stage.

40. Similarly, in 2023, a penalty was imposed by COPROCOM, acting on behalf of the Superior Body, for an ITB document prepared in connection with a price-fixing agreement among members of the Association of Flower Growers [APROFLOR as per its acronym in Spanish]. This agreement was in contravention of the provisions established in Article 11, paragraph a), of Act 7472, the Promotion of Competition and Effective Consumer Protection Act.

- APROFLOR, an association devoted to addressing the many challenges faced by flower growers in Costa Rica, was implicated in a price-fixing agreement that was found to be anti-competitive. This association is made up of farmers, agriculturists, and residents of Llano Grande, in Cartago, Costa Rica, and other members who are direct competitors in the production and sale of cut flowers.

- COPROCOM imposed a penalty on these price-fixing agreements, via Vote COPROCOM-64-2023, on the basis of being in contravention of Article 11 of Act 7472. These agreements were reached in meetings held by the Board of Directors and APROFLOR, in an attempt to control the price of several varieties of cut flowers sold in domestic markets.

**Table 1. Ongoing Investigations**

CASE FILE NO.	MARKETS	BEHAVIORS	RESOLUTION	STATUS
041-2021-IO	Construction of a public works project	Invitation to Bid [ITB] Document (collusive bidding)	RES-INV-016-2023	Moved back to the instruction stage. Preparations are underway for the commencement of proceedings.
022-2022-IO	Professional pharmaceutical services related to the dispensing of prescription drugs originating from comprehensive care systems [i.e.: Corporate Medicine and Mixed Medicine programs] in metropolitan areas	Invitation to Bid [ITB] Document (collusive bidding)	RES-INV-010-2023	This case is in the instruction stage; a request of information has been made to the parties involved.
006-2023-D	Sale of generic drugs and medical supplies intended for the hospital sector	Invitation to Bid [ITB] Document (collusive bidding)	RES-INV-017-2023	The investigation was initiated and the case was moved to the instruction stage.
071-2023-IO	Pharmaceutical products	Invitation to Bid [ITB] Document (collusive bidding)	N/A	A preliminary investigation is underway.
02-2021-IP	Flower Growers Market	Invitation to Bid [ITB] Document (price fixing agreement)	Vote-64-2023	A penalty was imposed for the ITB document and the case file has been closed.

### *SUTEL*

41. SUTEL officially opened a special procedure in 2021, for alleged absolute monopolistic practices, in the form of collusive bidding, during the adjudication process of radio spectrum frequencies. In 2022, 2023, and to date, this special procedure has remained in the preliminary investigation stage. During said period, the Competition Authority had to request judicial assistance to obtain relevant information that the economic agents refused to provide. The details of this ongoing investigation (which is confidential in accordance with Article 38 of Act 9736) are as follows:

**Table 2.**

Markets	Behaviors	Resolution	Case File No.
Narrowband spectrum	Absolute monopolistic practices (collusive bidding)	ROTC-00071-SUTEL-2021	GCO-OTC-PM-01538-2021

### *2.1.2. Abuse of dominant positions and vertical restraints.*

42. In regards to cases of abuse of dominant position in 2023, the competition authorities closed several ongoing cases, and opened a number of new cases, as described below:

***COPROCOM.***

43. In regards to cases of alleged relative monopolistic practices, there are several ongoing investigations into bicycle products, spare parts and accessories, as well as into food products. Collection of data and information relevant to these investigations is currently ongoing. This will determine if there is sufficient evidence to move said investigations to the instruction stage of the special procedure. The following investigations are ongoing:

**Table 3.**

CASE FILE NO.	MARKETS	BEHAVIORS	RESOLUTION	STATUS
064-2023-D	Bicycles	Exclusive distribution	N/A	A preliminary investigation is underway.
023-2020-D	Soccer match broadcasts	Invitation to Bid [ITB] Document (production control agreement / failure to notify a concentration)	VOTE 21-2023	The Superior Body closed this investigation on grounds of the applying party's lack of interest.

***SUTEL***

44. SUTEL imposed its first penalty for anti-competitive practices in accordance with Act 9736 in 2023. The imposition of the penalty is final and the offending company has since paid the fine. The case involved anti-competitive concerns related to a refusal to deal and an exclusivity agreement by the company “Empresa de Servicios Públicos de Heredia” [ESPH as per its acronym in Spanish]. The matter was resolved by the Board of Directors of SUTEL, via resolution RCS-074-2023<sup>8</sup>, on March 27th, 2023 (Case File GCO-OTC-PM-00695-2020).

45. Moreover, in 2023, SUTEL’s Investigation and Concentrations Unit initiated eight special procedures in regards to cases of alleged vertical restraint, most of which pertained to common-use telecommunications infrastructure, and all of which are considered to be confidential in accordance with the provisions established in Article 38 of Act 9736. All eight cases are currently in the preliminary investigation stage, as detailed below:

<sup>8</sup> Available at the following link: [https://www.sutel.go.cr/sites/default/files/rcs-074-2023\\_esph.pdf](https://www.sutel.go.cr/sites/default/files/rcs-074-2023_esph.pdf)

Table 4.

Markets	Behaviors	Case File No.
Common-use telecommunications infrastructure	Relative monopolistic practices	GCO-OTC-PM-01473-2023
Common-use telecommunications infrastructure	Relative monopolistic practices	GCO-OTC-PM-01223-2023
Common-use telecommunications infrastructure	Relative monopolistic practices	GCO-OTC-PM-01003-2023
Common-use telecommunications infrastructure	Relative monopolistic practices	GCO-OTC-PM-01000-2023
Common-use telecommunications infrastructure	Relative monopolistic practices	GCO-OTC-PM-00952-2023
Common-use telecommunications infrastructure	Relative monopolistic practices	GCO-OTC-PM-00741-2023
5G network deployment, radio spectrum	Relative monopolistic practices	GCO-OTC-PM-00607-2023
Common-use telecommunications infrastructure	Relative monopolistic practices	GCO-OTC-PM-00341-2023

46. During that same reporting period, SUTEL's Investigation and Concentration Unit closed three special procedures in the preliminary investigation stage, without imposing a penalty, that were being investigated for alleged vertical restraint in the Telecom Infrastructure Sharing Market (case file numbers: GCO-OTC-PM-02429-2022, GCO-OTC-PM-02328-2022, and GCO-OTC-CNN-00486-2022). The evidence gathered during the procedural stage was found to be insufficient to support the initiation of the instruction stage. Similarly, three other proceedings were rejected as the facts of these cases were considered not to be anti-competitive. Two of the proceedings were connected to the public procurement of services required for the deployment of the 5G network within the country, while the other was related to telephony and short messaging services (case file numbers: GCO-OTC-PM-01451-2023, GCO-OTC-PM-01283-2023, and GCO-OTC-PM-00754-2023). In addition, another proceeding was rejected (via an *ante causam* precautionary measure) as it was considered inadmissible under special procedure competition policy. This proceeding was also related to the deployment of the 5G network (case file number: GCO-OTC-PM-01058-2023). The details of the aforementioned seven proceedings are as follows:

Table 5.

Markets	Behaviors	Companies	Resolution	Case File No.
Infrastructure to support telecommunications networks	Relative monopolistic practices (refusal to deal, exclusivity/obstruction of competition)	Costa Rican Institute of Electricity	ROTC-00139-SUTEL-2023	GCO-OTC-PM-02429-2022
Infrastructure to support telecommunications networks	Relative monopolistic practices (refusal to deal, exclusivity/obstruction of competition)	Liberty Servicios Fijos LY S.A. Costa Rican Institute of Electricity	ROTC-00133-SUTEL-2023	GCO-OTC-PM-02328-2022
Infrastructure to support telecommunications networks	Failure to notify concentration and relative monopolistic practices (exclusivity)	Empresa de Servicios Públicos de Heredia-Fibraencasa S.A.	ROTC-00100-SUTEL-2023	GCO-OTC-CNN-00486-2022
Procurement for the deployment of 5G networks	Alleged relative practices	Costa Rican Institute of Electricity	ROTC-00169-SUTEL-2023	GCO-OTC-PM-01451-2023
Procurement for the deployment of 5G networks	Alleged relative practices	Costa Rican Institute of Electricity	ROTC-00147-SUTEL-2023	GCO-OTC-PM-01283-2023

Telephony and short messaging services	Alleged relative practices	Ring Centrales de Costa Rica S.A.	ROTC-00064-SUTEL-2023	GCO-OTC-PM-00754-2023
5G network deployment ( <i>Ante Causam</i> measure)	Alleged relative practices (obstruction of competition)	Costa Rican Institute of Electricity	ROTC-00106-SUTEL-2023	GCO-OTC-PM-01058-2023

47. Lastly, in 2023, SUTEL's Instruction Unit moved a procedure to the decision stage for an alleged failure to notify an economic concentration in the residential Internet, pay TV, and fixed telephony markets (case file number: GCO-OTC-CNN-00500-2021); the investigation is ongoing and the procedure presently remains in the final decision stage<sup>9</sup>.

### 2.1.3. Summary of enforcement actions taken by the Competition Authorities

#### *COPROCOM.*

48. The table below provides a summary of the work carried out by COPROCOM with respect to the enforcement of competition law.

**Table 6. Costa Rica: Competition law enforcement efforts carried out by COPROCOM. 2023**

CASE FILE NO.	MARKETS	BEHAVIORS	RESOLUTION	STATUS
CASE FILES UNDER INVESTIGATION				

<sup>9</sup> This procedure has been suspended following the dissolution of SUTEL's Board of Directors, which is responsible for the decision stage of the special competition procedure.

041-2021-IO	Construction of a public works project	Invitation to Bid [ITB] Document (collusive bidding)	RES-INV-016-2023	Moved back to the instruction stage.
022-2022-IO	Professional pharmaceutical services related to the dispensing of prescription drugs originating from comprehensive care systems [i.e.: Corporate Medicine and Mixed Medicine programs] in metropolitan areas	Invitation to Bid [ITB] Document (collusive bidding)	RES-INV-010-2023	Moved to the instruction stage.
006-2023-D	Sale of generic drugs and medical supplies intended for the hospital sector	Invitation to Bid [ITB] Document (collusive bidding)	RES-INV-017-2023	The investigation was initiated and the case was moved to the instruction stage.
034-2023-D	Vehicles	Omission of mandatory prior notice of economic concentration	N/A	A preliminary investigation is underway.
043-2023-IO	Communication media (print and other)	Omission of mandatory prior notice of economic concentration	RES-INV-018-2023	The investigation was initiated and the case was moved to the instruction stage.
064-2023-D	Bicycles	Exclusive distribution	N/A	A preliminary investigation is underway.
071-2023-IO	Pharmaceutical products	Invitation to Bid [ITB] Document (collusive bidding)	N/A	A preliminary investigation is underway.
<b>CASE FILES IN THE "INSTRUCTION" STAGE</b>				
075-2020-D	Sugar	Non-compliance of conditions		Procedure has been initiated and a preparatory hearing has been scheduled.
023-20-D	Cable TV market	Procedure has been completed.		Closed on grounds of the applying party's lack of interest. Closed.
041-2021-IO	Construction of a public works project	Invitation to Bid [ITB] Document (collusive bidding)	RES-INV-016-2023	Preparations are underway for the commencement of proceedings.
022-2022	Professional pharmaceutical services related to the dispensing of prescription drugs originating from comprehensive care systems [i.e.: Corporate Medicine and Mixed Medicine programs] in metropolitan areas	Collusive bidding	Special procedure has been initiated, charges have been filed, and information has been requested of the parties under investigation.	Under the investigation of the Instruction Unit; awaiting provision of information.
06-2023-D	Tender for supply/sale of diapers.	Collusive bidding	An order was issued and charges have been filed.	Under the investigation of the Instruction Unit.
<b>CASE FILES IN THE "DECISION" STAGE</b>				
<b>Procedures initiated under Act 7472</b>				
08-2019-IO	Radio content and ad space sales	Failure to notify concentration	Vote No. 049-2020	Pending reconsideration appeal
<b>Procedures initiated under Act 9736</b>				

072-2019-PO	Husked rice	Invitation to Bid [ITB] document (agreement to refuse to buy or sell goods or services)	Agreement No. 14 in Minutes of Ordinary Session No. 08-2023	Pending reassessment of fine imposed in Vote No. 022-2022 Ongoing legal proceeding
023-2020-D	Soccer match broadcasts	Invitation to Bid [ITB] Document (production control agreement / failure to notify a concentration)	VOTE 21-2023	Closed on grounds of the applying party's lack of interest.
075-2020-D	Sugar	Non-compliance of conditions		A preparatory hearing was held
02-2021-IP	Flower Growers Market	Invitation to Bid [ITB] Document (price fixing agreement)	Vote-64-2023	A penalty was imposed for the ITB document and the case file has been closed.

Source: Own elaboration.

## SUTEL

Table 7. Costa Rica: Competition law enforcement efforts carried out by SUTEL. 2023

The table below provides a summary of the work carried out by SUTEL with respect to the enforcement of competition law in 2023.

Case Files in the "Preliminary Investigation" stage

Case File No.	Markets	Behaviors	Companies	Resolution	Status
GCO-OTC-PM-01538-2021	Narrowband spectrum	Invitation to Bid [ITB] Document (collusive bidding)	Confidential*	ROTC-00071-SUTEL-2021 (open)	Preliminary Investigation
GCO-OTC-PM-01346-2021	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00001-SUTEL-2022 (open)	Preliminary Investigation
GCO-OTC-PM-01473-2023	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00167-SUTEL-2023 (open)	Preliminary Investigation
GCO-OTC-PM-01223-2023	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00119-SUTEL-2023 (open)	Preliminary Investigation
GCO-OTC-PM-01003-2023	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00111-SUTEL-2023 (open)	Preliminary Investigation
GCO-OTC-PM-01000-2023	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00101-SUTEL-2023 (open)	Preliminary Investigation
GCO-OTC-PM-00952-2023	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00094-SUTEL-2023 (open)	Preliminary Investigation
GCO-OTC-PM-00741-2023	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00066-SUTEL-2023 (open)	Preliminary Investigation (cumulative)
GCO-OTC-PM-00607-2023	5G network deployment, radio spectrum	Relative monopolistic practices	Confidential*	ROTC-00053-SUTEL-2023 (open)	Preliminary Investigation
GCO-OTC-PM-00341-2023	Common-use telecommunications infrastructure	Relative monopolistic practices	Confidential*	ROTC-00034-SUTEL-2023 (open)	Preliminary Investigation
GCO-OTC-PM-01451-2023	Procurement for the deployment of 5G networks	Alleged relative practices	Costa Rican Institute of Electricity	ROTC-00169-SUTEL-2023 (closed)	Rejected
GCO-OTC-PM-01283-2023	Procurement for the deployment of 5G networks	Alleged relative practices	Costa Rican Institute of Electricity	ROTC-00147-SUTEL-2023 (closed)	Rejected
GCO-OTC-PM-00754-2023	Telephony and short messaging services	Alleged relative practices	Ring Centrales de Costa Rica S.A.	ROTC-00064-SUTEL-2023 (closed)	Rejected
GCO-OTC-PM-02429-2022	Infrastructure to support telecommunications networks	Relative monopolistic practices (refusal to deal, exclusivity/obstruction of competition)	Costa Rican Institute of Electricity	ROTC-00139-SUTEL-2023	Completed
GCO-OTC-PM-02328-2022	Infrastructure to support telecommunications networks	Relative monopolistic practices (refusal to deal, exclusivity/obstruction of competition)	Liberty Servicios Fijos LY S.A. Costa Rican Institute of Electricity	ROTC-00133-SUTEL-2023	Completed

GCO-OTC-CNN-00486-2022	Telecommunications infrastructure for common use	Failure to notify concentration and relative monopolistic practices (exclusivity)	Empresa de Servicios Públicos de Heredia-Fibraencasa S.A.	ROTC-00100-SUTEL-2023	Completed
GCO-OTC-PM-01058-2023	5G network deployment ( <i>Ante Causam</i> measure)	Alleged relative practices (obstruction of competition)	Costa Rican Institute of Electricity	ROTC-00106-SUTEL-2023	Rejected
<b>Case Files in the "Instruction" stage</b>					
GCO-OTC-CNN-00500-2021	Residential Internet, Pay TV and Fixed Telephony	Failure to notify concentration	Transdatelecom S.A. & Cable Arenal del Lago S.A.	ROTC-00045-SUTEL-2022 (open) 09192-SUTEL-OTC-2023(transferred to the Board)	Completed
<b>Case Files in the "Decision" stage</b>					
GCO-OTC-CNN-00500-2021	Residential Internet and Pay TV	Failure to notify concentration	Transdatelecom S.A. & Cable Arenal del Lago S.A.	RCS-304-2023	Suspended <sup>10</sup>
GCO-OTC-PM-00695-2020	Common-use telecommunications infrastructure, Pay TV, Fixed Telephony and Residential Internet	Vertical restraints (refusal to deal and exclusivity agreements)	Empresa de Servicios Públicos de Heredia	RCS-074-2023	Completed

Note: This data is confidential as the case is in the Preliminary Investigation stage (in accordance with Article 38 of Act 9736).

#### 2.1.4. Judicial review

##### *COPROCOM.*

49. The following procedures initiated by COPROCOM are under judicial review in a Court of Justice:

**Table 8. Costa Rica: Competition-related Resolutions under Judicial Review.**

Court File No.	Parties	Market	Current situation
20-001006-1027-CA	CEFA CENTRAL FARMACÉUTICA S.A.	Pharmaceutical products	CEFA agent has been notified by the Court.
23-003097-1027-CA	LA NACIÓN AND OTHERS.	Failure to notify economic concentration.	Court Date scheduled for June 26th, 2024.
072-2019-PO (Four complaints were contested in court)	COMPAÑÍA ARROCERA INDUSTRIAL, CORPORACIÓN ARROCERA INDUSTRIAL, DEMASA AND OTHERS.	Alleged practices in the rice market	Several complaints were contested in court.
19-007808-1027-CA	CORPORACIÓN DE SUPERMERCADOS UNIDOS S.R.L. AND COMECA RETAIL S.A.	Notification of supermarket concentration.	An appeal was filed with the Court.

##### *SUTEL.*

50. SUTEL had no cases under judicial review to disclose in 2023.

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

#### *COPROCOM.*

51. A penalty was imposed by COPROCOM in 2023, acting on behalf of the Superior Body, for an ITB document prepared in connection with a price-fixing agreement among members of the Association of Flower Growers [APROFLOR]. This agreement was in contravention of the provisions established in Article 11, paragraph a), of Act 7472, the Promotion of Competition and Effective Consumer Protection Act.

- APROFLOR, an association devoted to addressing the many challenges faced by flower growers in Costa Rica, was implicated in a price-fixing agreement that was found to be anti-competitive. This association is made up of farmers, agriculturists, and residents of Llano Grande, in Cartago, Costa Rica, and other members who are direct competitors in the production and sale of cut flowers.
- COPROCOM imposed a penalty on these price-fixing agreements, via Vote COPROCOM-64-2023, on the basis of being in contravention of Article 11 of Act 7472. These agreements were reached in meetings held by the Board of Directors and APROFLOR, in an attempt to control the price of several varieties of cut flowers sold in domestic markets.
- COPROCOM rightfully nullified the price-fixing agreements that APROFLOR adopted in an attempt to control the price of several varieties of cut flowers. Moreover, by way of a resolution, COPROCOM imposed additional corrective measures intended to restore competition in the market and enforce effective consumer protections.

#### *SUTEL.*

52. On March 27th, 2023, the Board of Directors of SUTEL declared, via resolution RCS-074-2023, that “Empresa de Servicios Públicos de Heredia” [ESPH] was guilty of engaging in relative monopolistic practices involving the “Torres de Heredia” Condominium, in the form of exclusivity and refusal to deal agreements, in accordance with Article 54, paragraphs b) and d), of the General Telecommunications Act. Consequently, a fine was imposed amounting to 0.79% (zero point seventy-nine percent) of ESPH’s gross income for the 2021 fiscal year.

53. This all began in 2020, when a complaint was filed with SUTEL regarding the apparent infringement of monopolistic practices, which led to the initiation of the preliminary investigation stage under special procedure competition policy. This procedure reached the decision stage, where it was found that ESPH engaged in refusal to deal practices, thereby preventing other service providers from supplying the “Torres de Heredia” Condominium from 2017 to January 2022, making ESPH the only option for residential Internet at said condominium.

54. ESPH received at least two requests between September 2019 and January 2022 from service providers that sought access to the condominium. These requests were expressly denied by ESPH administrators. Service providers were denied access to the support infrastructure only after following a series of procedures that were never resolved and instead delayed the provision of services. Any third party seeking to provide telecommunication services to the condominium had to do so through ESPH’s fiber optic network. This meant that third parties would have to spend between 67% and 79% of the

fee charged to the end user to cover the cost of using ESPH's network, thereby creating an untenable situation that excluded other competitors.

55. At the time of these events, the only network available belonged to ESPH. This created two markets, a wholesale market for the leasing of ESPH's fiber optic network, and a retail market for the commercialization of fixed services. The actions taken by ESPH and the condominium's administration restricted service providers to a single mechanism for accessing the property (i.e.: the existing network). This made the network an essential commodity that was indispensable for third parties that sought to provide their services. By preventing access to other network operators and service providers, a de facto exclusivity agreement was created without the need to resort to exclusivity clauses or right-of-use clauses for the support infrastructure. This made clear that ESPH had engaged in implicit refusal to deal practices by charging an excessively high price for an essential commodity that made it impossible to compete at the retail level.

56. Exclusivity agreements in condominium properties can be detrimental to end users as the may, under certain circumstances, restrict or distort competition in a given market by excluding the competition and limiting the users' right to choose for themselves.

57. The fine SUTEL levied on ESPH via resolution RCS-074-2023 marked the first penalty imposed for anti-competitive practices under Act 9736, and the first investigation to comply with all the stages and time limits established in said act for each stage of the proceedings under the responsibility of SUTEL. The penalty imposed by the Board of Directors of SUTEL is final and the offending company has since paid the fine.

## 2.2. Mergers and acquisitions

### 2.2.1. Statistics on the number, size and type of mergers notified in accordance with competition law

#### COPROCOM.

58. The Competition Authority received 54 merger notifications; 45 of which were completed in 2023, while the rest remain under review.

59. The number of concentration notifications in 2023 increased considerably in relation to previous years, as shown below:

**Table 9. Number of cases completed by the Concentration Unit in 2013-2023**

CONCENTRATIONS	2013*	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Approved without conditions	7	24	22	37	31	37	23	17	31	20	38
Approved with conditions	0	1	1	0	2	2	1	1	2	1	1
Blocked (not approved)	0	0	0	0	0	1	0	0	0	0	1
Withdrawn by notifiers	0	1	1	0	0	0	1	0	0	0	2
Did not comply with notification requirements	0	0	0	0	4	0	0	2	0	3	2
<b>Total per year</b>	<b>7</b>	<b>26</b>	<b>24</b>	<b>37</b>	<b>37</b>	<b>40</b>	<b>25</b>	<b>20</b>	<b>33</b>	<b>24</b>	<b>44</b>

Source: Prepared by COPROCOM.

60. Among the most relevant markets under scrutiny for possible concentrations are: production, distribution, and commercialization of pure and "torrefacto" roasted coffee beans intended for consumption in Costa Rica; air passenger transportation; digital platforms; medical devices; fiscal warehouse services and cargo consolidation services;

lodging services; inbound tourism operations; manufacturing, commercialization, distribution, and sale of organic and inorganic synthetic fertilizers and pesticides; medical devices and industrial products; generation and sale of electric energy; wind energy production; vehicle rental in Costa Rica; university-level higher education; sale of chicken meat and related products; among others.

### *SUTEL.*

61. In August 2023, SUTEL received an application requesting the authorization of an economic concentration filed by Liberty Telecomunicaciones de Costa Rica LY S.A.<sup>11</sup>. It involved the purchase and sale of assets of another telecom service provider, Itellum Comunicaciones Costa Rica, S.R.L., most notably including the portfolio of corporate customers in the fixed Internet services, dedicated links, and MPLS network retail markets. It also involved the termination of a contract subscribed with a wholesale telecommunications operator.

62. The proposed transaction would entail the absorption, by Liberty Telecomunicaciones de Costa Rica LY S.A., of a competitor's customer portfolio within the domestic business sector at the retail level, and would involve two relevant markets, namely: 1) the fixed business Internet service market; and 2) the data transfer market; such transaction would be considered a horizontal concentration.

63. Upon further analysis, and in accordance with SUTEL's Guidelines on Concentration Analysis, it was determined that the transaction would not generate any negative foreseeable effects at a horizontal level, on either market, and that the notification fell in line with the principles of good notification procedure. Consequently, via advisory opinion 013-2023, the Commission for the Promotion of Competition [COPROCOM] found that there was sufficient evidence to grant authorization.

64. In accordance with the concentration analysis procedure established in Chapter V, Title III, of Act 9736, which was ratified via resolution RCS-288-2023 on November 30th, 2023 (Agreement No. 025-072-2023), the Board of Directors of SUTEL approved the concentration authorization request, during the first stage of the proceeding, without imposing any conditions.

### *2.2.2. Summary of key cases*

#### *COPROCOM.*

65. COPROCOM rejected the merger of SPIRIT AIRLINES, INC. and JETBLUE AIRWAYS CORPORATION due to possible anti-competitive effects. The notification was received via email, and announced a proposed transaction in which SPIRIT AIRLINES, INC. would transfer its entire capital stock to JETBLUE AIRWAYS CORPORATION.

66. JETBLUE and SPIRIT submitted commitments to address anti-competitive concerns. However, COPROCOM ultimately rejected the merger, via Vote COPROCOM-20-2023, citing concerns of possible anti-competitive effects on specific air transport routes, such as San Jose-Orlando and San Jose-Miami.

67. The decision stemmed from the concern that the proposed commitments did not offset the adverse effects on competition and consumers.

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<sup>11</sup> Processed in Case File No. L0155-STT-MOT-CN-01026-2023.

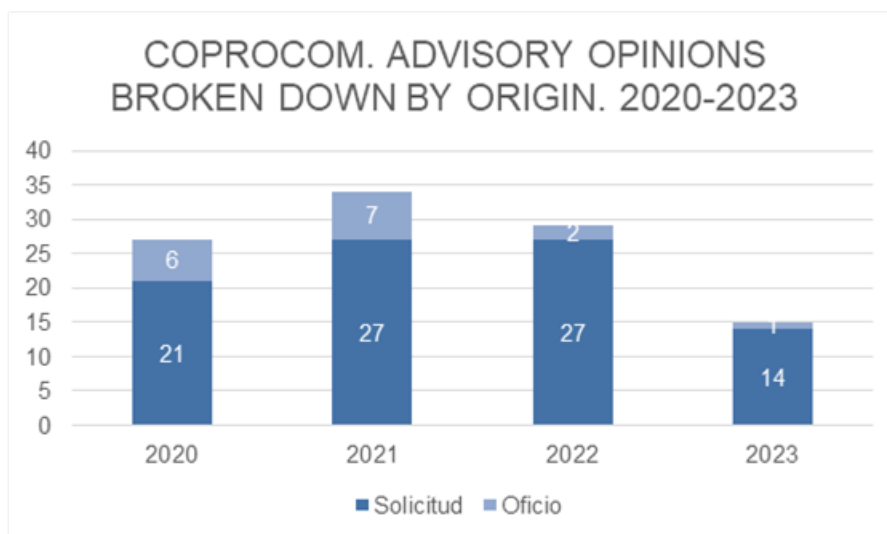
### 3. The Role of Competition Authorities in the Formulation and Implementation of other Policies, e.g. Regulatory Reform, Commercial And Industrial Policies

#### 3.1. Advisory opinions on competition

##### 3.1.1. COPROCOM.

68. The Commission for the Promotion of Competition issued 15 advisory opinions on various topics in 2023. Out of all of these, 93% were issued at the request of one of the interested parties, which is a testament to the importance of the competition authority as a consultation body for users. The following graph illustrates a comparison of the situation as of 2020.

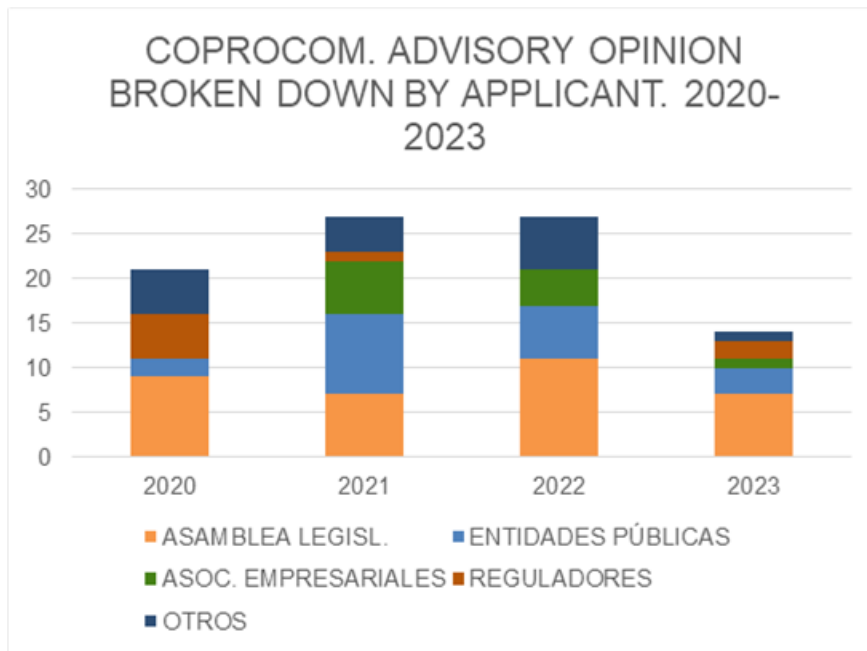
Figure 1. Advisory Opinions Broken Down by Origin



Source: Promotion and Investigations Unit

69. As in previous years, the majority of requests in 2023 were made by the Legislative Assembly, closely followed by the telecommunications sector regulator, the public entities (such as the Ombudsman's Office and the Comptroller General of the Republic), and others, a category which that includes other companies and their associations.

Figure 2. Advisory Opinions Broken Down by Applicant



Source: Promotion and Investigations Unit

**Table 3.1. Advisory opinions on regulations, regulation proposals, and bills issued by COPROCOM in 2023**

The table below lists the advisory opinions issued in 2022:

OPINION NO.		
01-2023	Opinion requested by SUTEL, related to proceedings against Empresa de Servicios Públicos de Heredia, for alleged monopolistic practices in connection with the "Torres de Heredia" Condominium.	The case file was analyzed and the respective recommendations were made to SUTEL's Board of Directors.
02-2023	Bill proposal titled: "Promotion of Development and Competitiveness Act (Merger of Economic Ministries)", Legislative File No. 23.540.	The Legislative Assembly was reminded of the need to maintain COPROCOM's technical, administrative, budgetary, and functional independence, which it has exercised from the moment that the Strengthening of Costa Rican Competition Authorities Act (Act 9736) was made effective. Other recommendations were also made.
03-2023	Opinion requested by Scotiabank de Costa Rica S.A. in relation to the proposed purchase and sale of a loan portfolio, and the absence of a mandatory prior authorization by the commission, citing concerns that the transaction does not meet the provisions established in Articles 88 and 89 of Act 9736.	The inquiry was addressed and COPROCOM concluded that, in accordance with Article 91, paragraph a), of the Strengthening of Costa Rican Competition Authorities Act (Act 9736), the transaction was exempted from the duty of prior notification on the grounds that the undertaking was in line with the buyer's usual line of business.
04-2023	Opinion regarding the Technical Study on the Concentration of Public Bus Transport Concessions.	<p>COPROCOM advised the Ministry of Public Works and Transport, the Council on Public Transportation, and the Public Utilities Regulatory Authority, to take the pertinent corrective measures required to ensure compliance with the provisions of subordinate clause 11 of Act 3503, and thereby prevent the concentration of public bus transport concessions into the hand of a small number of operators, which would be in contravention of the constitutional principles of competition and free concurrence.</p> <p>On a similar note, COPROCOM also recommended carrying out the necessary studies and actions to ensure that, in the event of suspension, cancellation, or expiration of the granted concessions, or the awarding of new concessions, the appropriate public bidding processes are completed to guarantee the principles of competition and free concurrence in that market.</p>
05-2023	Bill No. 23.736, titled: "Non-collective Passenger Transportation and Digital Platforms Act".	<p>COPROCOM does not support the passing of the bill until the following limitations on competition and free concurrence are addressed:</p> <ol style="list-style-type: none"> <li>1. The possible restriction of the number of drivers authorized to provide passenger transportation services on grounds of it being ruinous to competition.</li> <li>2. The establishment of a minimum gross profitability margin, insofar as these types of indicators tend to facilitate collusion and do not address the concerns of regulatory capture, which could lead to a situation in which service providers are entitled to excessive increases of income to the detriment of users.</li> </ol>
06-2023	Bill No. 23.532, titled: "Repeal of Bar Association Stamp Tax Duties Act".	<p>In general terms, COPROCOM supported the efforts made to repeal regulations that granted unjustified privileges to a select few and undermined fair competition across the country. Nevertheless, despite supporting the initiative to eliminate the Bar Association stamp tax, and other similar stamp tax duties, COPROCOM felt it was imperative to remind congressional representatives that, since the purpose of this parafiscal contribution was to establish a pension and retirement fund for members, repealing the Bar Association stamp tax, as proposed, could negatively affect the rights of these professionals.</p>

07-2023	Bill, Case File No. 23475, titled: "Amendments to the General Public Procurement Act (Act 9986) of May 27th, 2021, to Guarantee Public Procurement Transparency in Business Practices".	Congressional representatives were informed that COPROCOM acknowledged the concerns raised by public entities regarding practices that affect the efficiency of the public procurement process. However, COPROCOM emphasized that not all practices that affect concentration are considered anti-competitive and may be brought to COPROCOM's attention. Therefore, in view of the inconsistencies with the legislation currently in force, in terms of coherence and the principle of typicality in the wording of the regulations that were intended to penalize companies and individuals, COPROCOM recommended that the congressional representatives shelve the bill.
08-2023	Opinion requested by the Ministry of Labor and Social Security regarding the competition regime applicable to public companies.	The report found that the Public Sector encompasses all the public organizations. It is comprised of the branches of government, the autonomous and semi-autonomous institutions, the municipalities, the public companies, and the other non-governmental public entities. Due to its very nature, the Public Sector of Costa Rica is ever-evolving, which is why it is indispensable that its structure be regularly updated. B. The Ministry of National Planning and Economic Policy [MIDEPLAN as per its acronym in Spanish] is responsible for updating the institutional profile of the entities that make up the Public Sector with the purpose of achieving a complete and unified vision of the State of Costa Rica.
09-2023	Bill, Case File No. 23.619, titled: "Amendment to Paragraph Three of Article 23 and Addition of a Subsection N) to Article 3 of the Strengthening of Costa Rican Competition Authorities Act (Act 9736) of September 5th, 2023".	COPROCOM recommended that congressional representatives redirect the Bill to other bodies of the executive branch that would be able to act as impartial third parties with regard to the approval, review and modification of the fees charged by the Professional Associations. COPROCOM would then be able to assume a non-binding advisory role in support of these bodies, in accordance with the guidelines established in the Promotion of Competition and Effective Consumer Protection Act. It was recommended that certain guidelines be maintained, namely: the need for public technical criteria, the adherence to the principles of competition, and the tendency to focus on the interests of the collective over the interests of the professional associations.
010-2023	Basic wording of the bill titled: "Prohibition of Free Sale and Detonation of Noisy Fireworks Act", Case File No. 23.682.	COPROCOM concluded that the issuance of an advisory opinion was not warranted. However, COPROCOM did recommend that congressional representatives take the principles of effective market regulation into consideration.
011-2023	Decree No. 44196-MSP-MICITT, titled: "Regulation on Cybersecurity Measures Applicable to Telecommunication Services Based on Fifth Generation Mobile Technology (5G) and Above".	COPROCOM expressed the importance of reviewing Decree No. 44196-MSP-MICITT to prevent this regulation from becoming a barrier to entry for, and limit the expansion of, certain telecommunications operators and network providers. COPROCOM also emphasized the importance of striking a balance between the cybersecurity and data protection objectives, and the effective promotion of competition and innovation in the telecommunications sector.

012-2023	Legislative Case File No. 23.324, "Fostering and Promotion of Competition in the Pharmaceutical Market Act".	COPROCOM concluded that the bill covers, and introduces improvements to, some of the topics included in past initiatives, such as the standardization of sanitary registrations, the regulation of parallel imports, and the education of consumers regarding pharmaceutical products. COPROCOM has previously expressed its approval of all of these topics, as it considers that these are beneficial to free concurrence and, therefore, to competition within this market. However, the chapters related to the PROTECTIONS FOR CONSUMERS OF MEDICINAL PRODUCTS, the SUPERVISION AND REGULATION OF PENETRATION PRICING, and the SUPERVISION AND FAILURES OF THE MARKET, have serious issues with consistency and clarity with regards to the intentions of the initiative. THEREFORE, COPROCOM recommended that the congressional representatives shelve the bill.
013-2023	Opinion requested by SUTEL regarding the prior notification of concentration filed by Liberty Telecomunicaciones de Costa Rica LY, S.A. and Itellum Comunicaciones Costa Rica, S.R.L..	In response to SUTEL's request, COPROCOM issued a favorable advisory opinion regarding the authorization in question.
014-2023	Executive Decree No. 43806-H: " <i>Declaration of Public Interest regarding the Non-intrusive Inspection System [SINI as per its acronym in Spanish]</i> ".	COPROCOM expressed concerns of serious distortions to competition and free concurrence, and to the principle of competitive neutrality, in connection with Executive Decree No. 43806-H, dated November 29th, 2022, titled: "Declaration of Public Interest regarding the Non-intrusive Inspection System [SINI as per its acronym in Spanish]". COPROCOM recommended that the President of the Republic and the Ministry of Finance repeal the Executive Decree, by virtue of it being unconstitutional on grounds of it infringing the aforementioned principles, particularly with respect to the tax designation made in said legal instrument so that RACSA would be in charge of implementing and executing the SINI, and instead initiate a public bidding process to award the provision of this public service to a contractor, in accordance with the General Public Procurement Act (Act 9986) and its Regulations, so as to uphold and comply with the principles of competition, free concurrence, and competitive neutrality, among others.
015-2023	Report on the public inquiry submitted by the National Pharmaceutical Industry Association related to medicinal products that require bioequivalence testing.	COPROCOM recommended that the Technical Council on Registration of Medicinal Products and the Directorate of Health Regulation consider the following: <ul style="list-style-type: none"> <li>• A revision of Agreement No. MS-CTI-001-2021, dated January 29th, 2021, so as to reflect and be in keeping with current regulations (i.e.: to address concerns related to health risks and bioequivalence testing requirements).</li> <li>• A revision of the wording of the eventual reform of Agreement No. MS-CTI-001-2021, dated January 29th, 2021, and of subsequent agreements that may be enacted with regard to this matter, so as to avoid the introduction of undue requirements and/or barriers that may affect competition, with the aim of adhering to the principles of necessity, proportionality, minimum distortion, efficiency, transparency and predictability. To that end, COPROCOM recommends starting with:  <ul style="list-style-type: none"> <li>Adequately justifying the introduction of every new product cataloged in the prioritized list; and</li> <li>Elaborating on the criteria through which products will be selected and subsequently included in the prioritized list, and make this criteria known to the public, in order to ensure the transparency and predictability of the assessment process.</li> </ul> </li> </ul>

Source: Own elaboration.

**Table 3.2. COPROCOM. RELEVANT OPINIONS. 2023**

Among the many advisory opinions issued by COPROCOM in 2023, the opinions listed below are considered to be of greater relevance due to their impact on the country's citizens and economy:

OPINION NO.	TOPIC
04-2023	Opinion regarding the Technical Study on the Concentration of Public Bus Transport Concessions.
08-2023	Opinion regarding the competition regime applicable to public companies.
011-2023	Opinion regarding Decree No. 44196-MSP-MICITT, i.e.: "Regulation on Cybersecurity Measures Applicable to Telecommunication Services Based on Fifth Generation Mobile Technology (5G) and Above".
014-2023	Opinion regarding Executive Decree No. 43806-H: "Declaration of Public Interest regarding the Non-intrusive Inspection System [SINI as per its acronym in Spanish]" and the authorization granted to RACSA for the provision of scanner services.
015-2023	Opinion regarding the public inquiry submitted by the National Pharmaceutical Industry Association in relation to medicinal products that require bioequivalence testing.

Source: Promotion and Investigations Unit

### *SUTEL.*

70. SUTEL rendered a number of advisory opinions in 2023 with regard to bills, sector regulations and bids, most of which were officially issued of its own initiative. In each of these cases, SUTEL analyzed whether the proposal submitted for public inquiry had the potential to restrict competition.

**Table 3.3. Costa Rica: Advisory opinions on regulations, bills, and others, issued by SUTEL. 2023**

The following opinions were issued in 2023:

Number	Subject	Type of Proceeding	Result
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<p>Agreement No. 058-075-2023 (00071-SUTEL-SCS-2024) 10679-SUTEL-OTC-2023</p>	<p>Report on Opinion issued in regards to the Judicial Branch's procurement contract 2023PX-000038-0001300001 for the "Acquisition of MPLS links on an on-demand based model".</p>	<p>Proceeding initiated by request.</p>	<p>An opinion was issued on the procurement contract that was brought to the attention of SUTEL, in which it recommended that, in future procurement processes involving telecommunication services, the Judicial Branch consider opening a bidding process to promote free concurrence. The Judicial Branch, however, informed SUTEL that it would continue with the aforementioned procurement process in accordance with the General Administrative Procurement Act and its Regulations (Official Letter No. 021-P-2024, NI-00871-2024).</p>
<p>Agreement No. 007-071-2023 (10179-SUTEL-SCS-2023) 09812-SUTEL-CS-2023</p>	<p>Opinion regarding the bidding terms and conditions for the procurement of "fixed telephony services on an on-demand based model" submitted for public inquiry by the Judicial Branch.</p>	<p>Proceeding initiated by request.</p>	<p>An opinion was issued on the procurement contract that was brought to the attention of SUTEL, in which it recommended that, in future procurement processes involving telecommunication services, the Judicial Branch consider:</p> <ul style="list-style-type: none"> <li>• That the bidding terms and conditions should be made as open as possible so as to promote competition. To this end, conducting an exhaustive evaluation of the potential technological alternatives that would be able to meet the institution's communication needs is crucial, rather than limiting the conditions to a single specific type of technology.</li> <li>• Evaluating alternate scenarios that do not necessarily require that the Judicial Branch purchase any new equipment, and that do not necessarily require adapting to legacy technologies, so as to avoid excluding potential suppliers that could provide the same service through other types of fixed technologies.</li> <li>• Evaluating whether it is necessary, or advisable on the basis of justifiable evidence, that they keep all their telephone numbers under a single contract with one company, especially since 800, 900 and 905 numbers can now be ported to other operators.             <ul style="list-style-type: none"> <li>• Reducing the existing gap in information through a series of on-site visits to all of the facilities of the Judicial Branch that are involved in the procurement process, whereby potential bidders would be able to obtain information on the current state of the infrastructure and, therefore, make informed decisions on the possible deployment of networks and equipment, or on whichever other mechanism the Judicial Branch deems most appropriate.</li> </ul> </li> </ul>

<p>Agreement No. 015-084-2022 (00041-SUTEL-SCS-2023)</p> <p>Agreement No. 016-010-2023 (00956-SUTEL-SCS-2023)</p> <p>00024-SUTEL-OTC-2023</p> <p>00048-SUTEL-OTC-2023</p>	<p>Report on the draft resolution titled "Methodology for determining the lease fee charged for the construction and operation of public telecommunication networks in municipal and national public properties, and in properties owned by public titleholders, and the development of a methodology for calculating the financial consideration levied for the usage of public property to deploy telecommunications infrastructure in protected wild areas or in state-owned natural heritage areas".</p>	<p>Proceeding initiated by own initiative</p>	<p>In response to the public inquiry of the aforementioned draft resolution, SUTEL recommended that the Ministry of Finance consider making a series of modifications to Article 1, paragraphs 4) and 15), and Articles 3, 6, 8, and 13.</p>
<p>Agreement No. 027-072-2023 (10334-SUTEL-SCS-2023)</p> <p>09970-SUTEL-OTC-2023</p>	<p>Opinion regarding the procurement, by the Ministry of Agriculture and Livestock, of "Fixed telephony, VPN (MPLS), and fiber optic business Internet services intended for the Ministry's extension agencies, regional directorates, and central offices".</p>	<p>Proceeding initiated by request.</p>	<p>An opinion was issued on the procurement contract that was brought to the attention of SUTEL, in which it recommended that, in future procurement processes involving telecommunication services, the Ministry of Agriculture and Livestock [MAG as per its acronym in Spanish] consider:</p> <ul style="list-style-type: none"> <li>• That the bidding terms and conditions should be made as open as possible so as to promote competition.</li> <li>• Conducting a market research study so that the administration can determine the conditions, the prices, and the potential bidders that would be interested in providing the service.</li> <li>• Reducing the gap in information that exists among network operators and telecom service providers through a series of on-site visits to all of the facilities of the MAG that are involved in the procurement process. The Ministry of Agriculture and Livestock took SUTEL's recommendations into account and expressed that it would consider them in future procurement processes.</li> </ul>

<p>Agreement No. 032-065-2023 (09063-SUTEL-CS-2023) 09061-SUTEL-OTC-2023</p>	<p>Report on the proposal of Costa Rica's national cybersecurity strategy for 2023-2027, submitted for public inquiry by the Ministry of Science, Innovation, Technology and Telecommunications.</p>	<p>Proceeding initiated by own initiative</p>	<p>In response to the public inquiry of the aforementioned proposal, SUTEL recommended that the Ministry of Science, Innovation, Technology and Telecommunications consider:</p> <ul style="list-style-type: none"> <li>• Incorporating the principles of “effective competition”, “non-discrimination”, and “technological neutrality”, in section “4.5. Guiding Principles”.</li> <li>• The positive and negative impacts that the proposal could have on society, and the economy in general, by analyzing the cost of implementation, for all the parties within its scope, versus the projected benefits.</li> <li>• That proposals should, to the extent possible, be developed in the manner that is least disruptive to competition.</li> <li>• Guaranteeing the principle of legal certainty by establishing a legal framework that is clear, specific, and tailored to its main objective. Any ambiguity that may affect parties within its scope should be avoided. In this respect, it should not be overlooked that companies, especially startups, may have to shoulder a proportionately higher compliance cost, and that excessive regulation could become a barrier to entry into the market.</li> <li>• Respecting the principle of neutrality. Entities that engage or partake in similar activities must be subject to the same rules, while also preserving the ability to choose, adopt, and employ technologies, infrastructures, and business models of their own choosing for the purposes of effective competition. In addition, when a certain company or companies control the resources that are necessary to carry out a given activity, guaranteeing equitable and non-discriminatory access to these resources is crucial so as to allow new competitors the opportunity to compete with incumbent companies.</li> <li>• Allowing companies the opportunity to stand out from one another by offering distinctive features that appeal to consumers, particularly in respect to specific aspects that may influence competition within each market.</li> </ul>
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<p>Agreement No. 015-013-2023 (01752-SUTEL-SCS-2023) 01278-SUTEL-OTC-2023</p>	<p>Report on Opinion issued in regards to the Ministry of Public Education's procurement contract 2022-CD-00059-0007300001 for the "Migration of Contracts related to the Telecommunications Service Agreement with ICE in accordance with the provisions of Circular Letter DGABCA 0023-2022".</p>	<p>Proceeding initiated by own initiative</p>	<p>In regards to the procurement contract of the Ministry of Public Education [MEP as per its acronym in Spanish], of which SUTEL was made aware as a result of media coverage, SUTEL recommended the following:</p> <ol style="list-style-type: none"> <li>1. To consider the provisions set forth in the National Telecommunications Development Plan, during the procurement of connectivity services for education purposes, to ensure transparency, the participation of all potential bidders, and the constitutionality of the public bidding process.</li> <li>2. To consider conducting, in accordance with the applicable public procurement regulations, and once the term of contract 2022CD-000059-0007300001 expires in 2027, an open bidding process that promotes competition to acquire the desired telecommunications connectivity services for education purposes.</li> <li>3. To consider that any possible extension of contract 2022CD-000059-0007300001, which would restrict free market competition via a legal exception mechanism, should not be exempt from complying with the requirements defined in the General Public Procurement Act and its Regulations, and more specifically, that it should not be exempt from the requirement to conduct a market research study in accordance with the guidelines issued by the Ministry of Finance with regard to this matter.</li> </ol> <p>Given that the MEP did not provide a response with regard to its stance on the recommendations made by SUTEL, the MEP was advised to provide a written response on whether it would fully or partially accept the recommendation issued by the Superintendency. No response thereof has been given by the MEP to date.</p>
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<p>Agreement No. 004-014-2023 (01604-SUTEL-SCS-2023) 01556-SUTEL-OTC-2023</p>	<p>Report on a potential bidding process, from a competition perspective, for the assignment of radio spectrum frequencies required for the deployment of 5G mobile networks.</p>	<p>Proceeding initiated by own initiative</p>	<p>SUTEL recommended that the Ministry of Science, Innovation, Technology and Telecommunications consider:</p> <ul style="list-style-type: none"> <li>a. Instructing SUTEL to initiate a bidding process for the allocation of radio spectrum frequencies required for the deployment of 5G mobile networks across the country.</li> <li>b. Continuing to take the steps that may be necessary to reclaim any unused or underutilized frequencies in the 2600 MHz radio spectrum, to which end SUTEL reiterates the need to determine the recovery mechanism that would require the least amount of time, as provided in Act 8642.</li> <li>c. Incorporating, as part of the bidding process for IMT-2020 networks, the public policy conditions that would be necessary to establish measures to avoid radio spectrum concentration issues.</li> <li>D. Continuing to take actions towards adjusting the assignment process of other radio services within the 3625 MHz to 3700 MHz radio spectrum range, with the aim of expanding the accessibility of the 100 MHz that are available in the 3.5 GHz band.</li> </ul> <p>SUTEL's requests were included and communicated in notice MICITT-DM-OF-416-2023 of the Executive Branch (NI-05991-2023).</p>
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## 4. Resources Available to the Competition Authorities

### 4.1. General resources (current amounts and changes in relation to the previous year):

#### 4.1.1. Annual budget (in CRC and USD)

##### *COPROCOM.*

71. COPROCOM's annual budget for 2023 was ₡735,034,000 (seven hundred and thirty-five million thirty-four thousand colones), which is the equivalent of US\$1,395,069<sup>12</sup> (one million three hundred and ninety-five thousand sixty-nine dollars). It should be noted that this amount represents approximately 29.95% of the budget specified in Act 9736.

72. Even though Act 9736 made a provision for a significant increase in COPROCOM's budget, no such budget has been approved by the Ministry of Finance, as required by law.

<sup>12</sup> Assuming that the average annual exchange rate is 526.88 colones per U.S. dollar.

*SUTEL.*

73. SUTEL's annual budget for 2023 was ₡24,817,363,290.00 (which is equivalent to US\$47,102,496.37)<sup>13</sup>; of that amount, the budget of the Directorate of Competition was ₡690,296,256.00 (which is equivalent to US\$1,310,158.39).

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

74. In 2023, COPROCOM had a staff of **16** employees, which included three Proprietary Commissioners, an administrative assistant, 8 attorneys, and 4 employees working in the economic department.

*SUTEL.*

75. In 2023, SUTEL had a staff of 133 employees, 11 of which worked directly with the Directorate of Competition; of these 11 employees, 5 were attorneys, 5 were economists, and 1 was an engineer.

76. It should be noted that, in 2023, two positions were filled that were included in the comprehensive restructuring proposal that SUTEL presented to the Board of Directors of ARESEP via Agreement No. 009-014-2020, namely: two economists.

**4.1.3. Human resources (person-years) devoted to: anti-competitive enforcement, concentration analysis and compliance, defense efforts.***COPROCOM.*

77. In 2023, COPROCOM was staffed with five people who were assigned to concentration analysis, four people who were assigned to promotion and research, three people who were assigned to the Instruction Department, and two people who were assigned to the Directorate of the Technical Body. Additionally, COPROCOM was staffed with three proprietary commissioners that served on the Superior Body.

*SUTEL.*

78. In 2023, SUTEL was staffed with 6 people who were assigned to research work, 4 people who were assigned to instruction, and 1 person who held the position of Director at the Directorate of Competition. While there is in fact a considerable degree of specialization among the staff, the personnel of the Directorate of Competition does on occasion, when required, collaborate with matters related to concentration cases and promotion and advocacy work. When it comes to the work carried out during the preliminary investigation and instruction stages of the special procedure, however, the independence and separation of duties of the personnel, as required by Act 9736, is upheld.

**4.2. Time period covered by the information above.**

79. The information above pertains to actions that took place from January to December 2023.

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<sup>13</sup> Assuming that the average annual exchange rate is 526.88 colones per U.S. dollar.

## 5. Summaries of, or References to, New Reports and Studies on Competition Policy Issues

### 5.1. Market research studies

#### 5.1.1. COPROCOM.

##### *Technical Study on the Concentration of Public Bus Transport Concessions*

80. COPROCOM conducted a technical study that found that the concessions of important passenger transport bus routes were concentrated among a small number of companies. This is despite the fact that regulations restrict the number of concessions that a single company is allowed to hold.

81. The study identified five economic interest groups that consolidate control of a substantial number of bus route concessions among a small number of economic agents. **These bus route concessions encompass densely populated regions within the Greater Metropolitan Area and strategic tourist destinations across the country.** The situations outlined in the study are not exhaustive and, therefore, should not be interpreted as being limiting or restrictive towards the potential existence of more specific cases that may be identified in the future. Such cases could involve new economic interest groups that have yet to be identified.

82. Furthermore, the apparent issue with the concentration of concessions is compounded by **the infrequent practice of awarding concessions through a public bidding process, as stipulated in the Political Constitution, which would foster competition and free concurrence principles in the interest of the service's end users.** According to information provided by the Ministry of Public Works and Transport [MOPT], the ratio of concession routes granted through bids to the total number of routes in operation is 0.21%. COPROCOM had previously expressed concerns about the adverse effects on users stemming from the continuous renewal of concessions.

83. In light of the study's findings, COPROCOM advised the Ministry of Public Works and Transport [MOPT], the Council on Public Transportation [CTP], and the Public Utilities Regulatory Authority [ARESEP], to take the pertinent corrective measures required to ensure compliance with the provisions of subordinate clause 11 of Act 3503, and thereby prevent the concentration of public bus transport concessions into the hand of a small number of operators, which would be in contravention of the constitutional principles of competition and free concurrence.

84. Similarly, COPROCOM also recommended carrying out the necessary studies and actions to ensure that, in the event of suspension, cancellation, or expiration of the granted concessions, or the awarding of new concessions, the appropriate public bidding processes are completed **to guarantee the principles of competition and free concurrence in that market.**

#### 5.1.2. SUTEL.

##### *Market research study on pipeline infrastructure and its impact on competition.*

85. The objective of the study was to analyze the competitive conditions of the pipeline infrastructure market, and of the alternative infrastructure, if any, that exists within the country. The study found that the pipeline infrastructure is insufficient, that what little there is available is often located near urban areas, and that the majority of the ownership is concentrated in a single company, the Costa Rican Institute of Electricity [ICE as per its acronym in Spanish]. In accordance with the analysis presented in the study, the competitive

conditions of the pipeline infrastructure market, and the alternative infrastructure that exists within the country, were adversely affected to some extent by: the lack of incentives offered for the construction of additional infrastructure and the concessioning of the existing infrastructure, in addition to the drawn-out response of the competent authorities involved in some of these procedures.

86. The study also found that there is a need to: (i) consider regulatory alternatives in light of the potential rigidity of supply and the increasing demand for pipeline infrastructure and its alternatives; (ii) promote the advantages that are closely associated with the construction of this type of infrastructure; and (iii) improve the expandability of traffic by replacing the copper cabling with higher capacity fiber optic cabling.

87. The study posits a series of recommendations with different time frames (short and long term); in the short term, the study suggests a revision of the obligations regarding the disaggregation of public telecommunication networks, the standardization of norms and municipal authorizations that regulate the installation of pipelines in public thoroughfares, the standardization of authorizations granted by the Ministry of Public Works and Transport [MOPT] for the installation of pipelines in public thoroughfares under its jurisdiction, the publication of information related to the pipeline infrastructure built by district in SUTEL's official web page, the advocacy of municipal regulations that promote the installation of fiber optic cables through microtrenching, and the promulgation of regulations that allow for the installation of multiple pipelines in: free trade zones, condominiums, shopping centers, and industrial parks. Lastly, the study also recommends improving SUTEL's response time with respect to the resolution of conflicts arising from the use of this type of infrastructure.

88. In the long term, the study recommends improving the criteria for infrastructure sharing by subjecting the infrastructure sharing charges to replicability tests on an ongoing basis.

89. The study was approved by the Board of Directors of SUTEL by way of Agreement No. 021-073-2023 on December 7th, 2023<sup>14</sup>.

90. The recommendations contained within this study have been considered by the Ministry of Science, Innovation, Technology and Telecommunications, and the Coordination Commission on the Installation or Expansion of Telecommunications Infrastructure, and will be incorporated into the Telecommunications Infrastructure Action Plan for 2024-2025. These recommendations were also considered by the Federated Association of Engineers and Architects.

91. Moreover, efforts are being made to follow up on the position of the Ministry of Public Works and Transport with respect to the recommendations that were made (Official Letter No. 01352-SUTEL-OTC-2024, dated February 21st, 2023).

*Market research study on the municipal regime and its impact on the deployment of infrastructure required for 5G networks*

92. The purpose of this study was to identify the barriers that could potentially affect the deployment of telecommunications infrastructure at a local level, and prevent or restrict the entry of new competitors or the expansion of incumbent companies. The study also

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<sup>14</sup> The market research study is available at the following link: [https://www.sutel.go.cr/sites/default/files/estudio\\_de\\_mercado\\_sobre\\_la\\_infraestructura\\_de\\_ductos\\_y\\_su\\_impacto\\_en\\_la\\_competencia\\_del\\_mercado\\_final\\_1\\_0.pdf](https://www.sutel.go.cr/sites/default/files/estudio_de_mercado_sobre_la_infraestructura_de_ductos_y_su_impacto_en_la_competencia_del_mercado_final_1_0.pdf)

sought to provide tools designed to promote the development of 5G services at a municipal level by fostering competition and offering investment incentives.

93. The recommendations proposed in the study mainly focus on the importance of simplifying, clarifying and standardizing the restrictions established by the regulations. In addition, the study posits that elements of discretion and/or uncertainty undermine the network operators' incentives to invest in new infrastructure.

94. Some of the indicators used in the study reveal a degree of consistency among municipalities, while others reveal varying degrees of disparity, with some regulations showing significant deviations from the reference framework. This highlights the need to establish a national standard and the importance of improving the response time of the municipalities. Lastly, the study identified and scrutinized elements established in the regulations that create imbalances in favor of incumbent companies in Costa Rica.

95. The study proposed a series of recommendations that should be taken by the MICITT and the Coordination Commission, with respect to the Installation or Expansion of the Telecommunications Infrastructure, to eliminate barriers affecting the deployment of the telecommunications infrastructure.

96. The study was approved by the Board of Directors of SUTEL by way of Agreement No. 023-069-2023 on November 16th, 2023<sup>15</sup>.

97. The recommendations contained within this study have been considered by the Ministry of Science, Innovation, Technology and Telecommunications, and the Coordination Commission on the Installation or Expansion of Telecommunications Infrastructure, and will be incorporated into the Telecommunications Infrastructure Action Plan for 2024-2025.

98. This study was widely publicized in the media and national press<sup>16</sup>.

## 6. Other Relevant Actions Taken by the Competition Authorities

### 6.1. Cooperation agreements with other Competition Authorities.

#### 6.1.1. COPROCOM.

99. In 2023, COPROCOM signed a “Memorandum of Understanding on the Technical Cooperation in Economic Competition Matters between the Federal Telecommunications Institute of the United Mexican States and the Commission for the Promotion of Competition of the Republic of Costa Rica”. This memorandum was signed in June 2023.

#### SUTEL.

100. On November 16th, 2023, SUTEL signed an international cooperation agreement on economic competition matters with the Commission for the Defense and Promotion of

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<sup>15</sup> The market research study is available at the following link: [https://www.sutel.go.cr/sites/default/files/estudio\\_mercado\\_barreras\\_despliegue\\_infraestructura\\_5\\_g\\_1.pdf](https://www.sutel.go.cr/sites/default/files/estudio_mercado_barreras_despliegue_infraestructura_5_g_1.pdf)

<sup>16</sup> For more information, consult the following article: <https://www.crhoy.com/tecnologia/los-principales-obstaculos-que-enfrentan-empresas-de-telecomunicaciones-en-tramites-municipales/>; <https://www.crhoy.com/tecnologia/los-principales-obstaculos-que-enfrentan-empresas-de-telecomunicaciones-en-tramites-municipales/>

Competition [CDPC] of the Republic of Honduras (Agreement No. 025-046-2023 was ratified by the Board of Directors of SUTEL on August 3rd, 2023)<sup>17</sup>.

101. In addition, SUTEL is currently in the process of negotiating cooperation agreements with the telecommunications competition authority of Peru, i.e.: the Supervisory Agency for Private Investment in Telecommunications [OSPITEL as per its acronym in Spanish].

## 6.2. Other promotion and advocacy actions

### 6.2.1. SUTEL.

*Guidelines for promoting competition of telecommunication services in connection with the internal regulations of properties with shared infrastructure required for network deployment*

102. These guidelines are intended for those in charge of the drafting of internal regulations of properties subject to the Condominium Property Regulation Act (Act 7933), prior to the registration of a given project's articles of incorporation under the condominium property regime in the National Registry of Costa Rica, so as to avoid imposing restrictions against competition from the moment that this type of property is established, and instead create a competitive environment for the future deployment of telecommunication networks, in the interest of all parties and stakeholders.

103. To that end, the guidelines suggest posing a series of questions to determine whether a regulation will restrict competition, and whether there are less restrictive alternatives for achieving the desired outcome. In addition, the guidelines provide examples of anti-competitive wording in internal regulations, such as: restrictions on the procurement of telecommunication services on the part of the administration, or restrictions on the procurement and installation of telecommunication services for aesthetic reasons. The guidelines also provide examples of favorable wording that further clarifies the process and promotes competition, in addition to a series of recommendations aimed at promoting competition and transparency.

104. The instrument was approved by the Board of Directors of SUTEL by way of Agreement No. 019-024-2023 on April 13th, 2023<sup>18</sup>.

105. The Federated Association of Engineers and Architects organized a forum to disseminate the guidelines published by SUTEL among its members.

*Manual of best practices for the deployment of telecommunication networks in business and commercial properties with shared infrastructure*

106. This manual was created in 2023. It contains guidelines for developers, administrators, network operators and telecom service providers, and commercial and business customers of private properties of a business or commercial nature, with the aim of complementing the regulatory framework that governs the deployment of networks by optimizing the infrastructure within private properties of a business and commercial nature.

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<sup>17</sup> Available at: [https://www.sutel.go.cr/sites/default/files/convenios\\_contribuciones/mde\\_sutel-cdpc\\_honduras\\_firmado%5B1%5D.pdf](https://www.sutel.go.cr/sites/default/files/convenios_contribuciones/mde_sutel-cdpc_honduras_firmado%5B1%5D.pdf)

<sup>18</sup> The instrument is available at the following link: [https://www.sutel.go.cr/sites/default/files/lineamientos\\_para\\_reglamentos\\_condominales\\_vf.pdf](https://www.sutel.go.cr/sites/default/files/lineamientos_para_reglamentos_condominales_vf.pdf)

107. The instrument was approved by the Board of Directors of SUTEL by way of Agreement No. 014-023-2023 on March 30th, 2023<sup>19</sup>.

*Guidelines for promoting competition in the operation of neutral networks developed under private initiative*

108. These guidelines seek to prevent potential distortions of competition in the event of the deployment of neutral networks developed with private investments. Its purpose is to protect the principle of free competition established in Article 46 of the Political Constitution, and in the General Telecommunications Act, by promoting an environment that favors free competition in the telecommunications sector.

109. The guidelines were ratified through Agreement No. 033-065-2023; this agreement was passed on October 26th, 2023, by the Board of Directors of SUTEL<sup>20</sup>.

*Manual of best practices for the public procurement of telecommunication services*

110. This manual is directed towards employees of public institutions in Costa Rica that purchase telecommunication services, on behalf of the State, by intervening in any of the stages of the public procurement process. The purpose of this manual is to provide a tool that ensures that the design, development, and execution of a public procurement process to acquire telecommunication services is carried out in such a way that complies with the principles of competition established in Act 8642, and adheres to the legal framework established in the General Public Procurement Act (Act 9986) and its Regulations (Executive Decree 43808-H), with regard to the principles of equality and free concurrence. Its purpose is to ensure that, in the different stages of the procurement process, there are no restrictions, obstacles, barriers or undue distortions that could interfere with the participation of telecom service providers and, therefore, result in the inefficient use of public resources.

111. The instrument was approved by the Board of Directors of SUTEL by way of Agreement No. 009-071-2023 on November 28th, 2023<sup>21</sup>.

*Guidelines for complying with SUTEL's unannounced inspections.*

112. The purpose of these guidelines is to provide information to network operators, and other service providers in the telecommunications sector, on how to comply with any unannounced inspection that SUTEL may be authorized to carry out in its capacity as the sector's competition authority. The purpose of this initiative is to provide economic agents with information on how to comply with unannounced inspections, in addition to the obligations, and the rights to which they are entitled, in the event of such an administrative proceeding.

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<sup>19</sup> The manual is available at: [https://www.sutel.go.cr/sites/default/files/lineamientos\\_para\\_el\\_despliegue\\_de\\_redes\\_de\\_infraestructura\\_de\\_uso\\_comun\\_vf.pdf](https://www.sutel.go.cr/sites/default/files/lineamientos_para_el_despliegue_de_redes_de_infraestructura_de_uso_comun_vf.pdf)

<sup>20</sup> The guidelines are available at the following link: [https://www.sutel.go.cr/sites/default/files/lineamientos\\_para\\_promover\\_competencia\\_redes\\_neutras\\_de\\_iniciativa\\_privada.pdf](https://www.sutel.go.cr/sites/default/files/lineamientos_para_promover_competencia_redes_neutras_de_iniciativa_privada.pdf)

<sup>21</sup> The manual is available at the following link: [https://www.sutel.go.cr/sites/default/files/manual\\_de\\_buenas\\_practicas\\_compras\\_publicas\\_servicios\\_telecom\\_0.pdf](https://www.sutel.go.cr/sites/default/files/manual_de_buenas_practicas_compras_publicas_servicios_telecom_0.pdf)

113. The instrument was approved by the Board of Directors of SUTEL by way of Agreement No. 034-065-2023 on October 26th, 2023<sup>22</sup>.

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<sup>22</sup> The guidelines are available at the following link: [https://www.sutel.go.cr/sites/default/files/lineamientos\\_de\\_actuacion\\_ante\\_las\\_inspecciones\\_no\\_a\\_nunciadas\\_de\\_la\\_sutel\\_0.pdf](https://www.sutel.go.cr/sites/default/files/lineamientos_de_actuacion_ante_las_inspecciones_no_a_nunciadas_de_la_sutel_0.pdf)