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## **Global Forum on Competition**

### **INDEPENDENCE OF COMPETITION AUTHORITIES - FROM DESIGNS TO PRACTICES**

#### **Contribution from Costa Rica**

-- Session III --

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*This contribution is submitted by Costa Rica (COPROCOM) under Session III of the Global Forum on Competition to be held on 1-2 December 2016.*

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## INDEPENDENCE OF COMPETITION AUTHORITIES –FROM DESIGNS TO PRACTICE

-- Costa Rica\* --

1. Costa Rica is fully aware of the importance of implementing the recommendations suggested by OECD as part of the inter peers diagnosis done made in 2014, concerning the structure of the body, identifying key aspects whose attention is essential to achieve a design of a more independent competition authority with broader powers according to the minimum parameters established in the doctrine and international experience

### **1 About the Structure of the Commission to Promote Competition (COPROCOM)**

2. The Law on Promotion of Competition and Effective Consumer Defense (Law No. 7472) creates the Commission to Promote Competition as a fully decentralized body under the Ministry of Economy, Trade and Industry which will be in charge of officially knowing or by denunciation and to sanction, as appropriate, all practices that constitute obstacles or unnecessary difficulties which impede free competition and market fluidity.

3. This body is formed by five members and five alternate members appointed by agreement of the Executive Branch at the proposal of the Minister of Economy, Trade and Industry. The members of the body shall be persons of prestige, with vast experience in the field, recognized consideration and independent judgment. As relates to the appointment of the Chairman, this is carried out by the other members of the body and this will remain in office for a period of two years.

4. Necessarily four of the members must be a lawyer, an economist and two professionals with University Degrees in the field of science, related to the activities of the Commission. As for the alternate members these will occupy the positions of the owners in case of temporary absence, impediments or excuses, and must meet the same requirements as the owners. To the sessions both the owners and the alternates may attend, but only the owners will vote. The duration of the members in office is four years and they may be consecutively reelected only once and will have a diet per session held.

5. The Commission also has a system of causes for removal, impediments, excuses and disqualification, for those situations where there are reasons, motives, impediments on the side of any member for the exercise of the functions that have been entrusted to him. Therefore, to safeguard the objectivity and transparency that should prevail in all actions performed by the body.

6. The Commission has a Technical Support Unit, made up of professionals in subjects pertaining to the Law No. 7472 whose functions correspond to the dissemination and processing of the scope of the Competition Law as well as specific aspects of the work of the body, instructing penalty procedures which have been ordered by the Commission, conduct analyzes and technical studies for the compliance of the functions of the Commission. The unit serves as the Technical Advisory body of the Commission, however,

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\* This contribution was prepared by COPROCOM [Comisión para Promover la Competencia (Commission for the Promotion of Competition)], Ministry of Economy, Industry and Commerce, Costa Rica.

it is necessary to indicate that the personnel comprising the Technical Unit is part of the payroll of the Ministry of Economy therefore the officials are under a special regime which is part of State Institutions. The foregoing has as a result that the Commission can not hire staff on their own initiative but has the personnel hired by the Ministry of Economy. Likewise wages are part of a salary scale established for civil public officers in general, there are no possibilities for promotions or promotions to climb to a higher level for reasons of experience in the matter or case management.

7. With regard to the structure of the Commission, it should be noted that this body is part of the formal organizational structure of the Ministry of Economy, as for the budgetary, administrative and staff availability are provided by the institution. This means that the agency does not have an independent budget hence there are limitations to hire physical space, expansion of the personnel payroll to address issues, acquisition of more specialized computer equipment, and other priorities that result from the economic independence.

## **2 Challenge for the Costa Rican competition Agency**

8. The main challenge facing the agency is to achieve that the Commission attains autonomy and administrative independence in making decisions achieving that the body can make its own decisions regarding their performance in terms of economic and human resources, achieve to expand its capabilities of self organization.

9. The above is closely linked to the issue that the Commission can not hire its own staff, since this is provided by the Ministry of Economy, which means that officials who make up the Technical Unit and are working for the Commission belong to the payroll of the Ministry, since their wages are canceled by this.

10. Additionally, there does not exist the possibility of hiring more staff precisely because they were limited to make these decisions in the absence of budgetary autonomy.

11. As a result of the foregoing, it should be noted that the Executive Branch decided to promote a legal reform of Law No. 7472 contemplating key aspects of the normative that requires a substantial change in order to achieve the growth of the body and therefore strengthening the policy and the right to competition in the country.

12. This project covers the topics associated with the creation of an autonomous figure in the exercise of administrative functions, financial and technical. The proposal envisages the creation of the Administrative Tribunal of Competition, as a fully decentralized body under the Ministry of Economy, Industry and Commerce (MEIC). This project is granting legal instrumental status to the organ, thus strengthening its functions and powers to achieve independence in a broadest sense.

13. As has been indicated, although the Commission has no budgetary independence, it is essential to be clear that there is no political incidence with respect to decisions that the body can make in the exercise of its powers to investigate or stop conducting investigations. The above is the result that decisions are taken by all members who compose it through a deliberative process that guarantees the study and evaluation of cases, and the alternatives to protect the competition process and fulfill the functions have assigned by law.

14. It should be mentioned that the presentation of the draft to amend the Law for the Promotion of Competition and Effective Consumer Protection obeys to an initiative from the Executive Branch and is. It is important to note that this reform has a point benefit which is the issue of independence and autonomy of the body what would collaborate with the growth of the Authority and therefore greater results would be achieved for the performance of the Competition Policy at national level.

15. Regarding the supervision or possible strategies this Authority has to observe, it should be noted that the Commission is fully decentralized body whose decisions are exclusively due to resolutions of a technical nature without operating any political influence or subordinate relationship, regardless of the budgetary aspects and other nature which directly depend of the Ministry. Hence the government does not interfere in any way in terms of the results that may arise as part of investigations or opinions taken by its members.

16. With regard to the study and care of requests submitted by a government source, it is necessary to mention that these are treated with the same interest and processing that is given to other requests coming from traders, consumers and others, which means that there are no preference or priority interest in the cases presented by the government. The above is the result that decisions are taken together by the commissioners that make up the body, which somehow comes to permeate transparency and objectivity of judgments issued by the Authority.

### **3 Generalities about the budget of the commission and other financing details.**

17. The budget the Commission has comes from the budget of the Ministry of Economy, which is the body responsible for presenting the annual budget plan of the total institution before the Legislative Assembly for this body is constitutionally mandated to approve the respective budget. The above means that the economic resources that are approved will be subject to other aspects as could be ministries priorities, attention of urgent cases, and other aspects.

18. The above means that the agency has the same possibilities to increase or decrease the Budget than the other directorates which form the Ministry, which implies that the body has limits to decide in reference to hiring human resources, purchase of more specialized information equipment or contract a physical space that has the installations related to the performance of the functions.

19. The Financing facilities could respond to the collaboration of other government entities such as it happened years back when the collaboration from the Spanish Agency of Competition, the Canadian, United States, Germany was received as well as other International entities of competition which collaboration was reflected in the performance of training for the plant officials and in general the administered, achieving to perform tasks in the promotion of competition culture through the identification and implementation of important Tools; guidelines, manuals and other instruments to render the services.

20. The Costa Rican Competition agency can not recruit its own staff, since the contracts are held by the Ministry of Economy, which is responsible for canceling the amounts related to payment of wages, the progress in the professional career at institutional level and any Management referring to the termination of the employment relationship, because the officials who make up the Technical Support Unit are part of the ministerial payroll.

21. Regarding the appointment of members of the Body, it must be indicated that this is a power that is of the competition of the Minister of Economy as well as for the renewal of the individual appointment of each commissioner. In addition, it should be noted that the decision includes only the individual appointment of the members that make up the body for the periods set out in the regulations. Regarding the appointment of the President of the Commission, this shall be elected by the members who form the Commission to exercise its charge for a period of two years.

#### **4 Final Thoughts**

22. As previously indicated, the Competition Authority of Costa Rica, is going through a process of implementing some necessary changes as part of its growth and performance of the body.

23. As indicated by OCDE, the independence and autonomy are fundamental elements in order to achieve a better performance of the Commission, therefore the budgeting limitations could provoke certain obstacles impairing the Competition Body to perform an organizational logistic that responds to its performance as such.

24. It should be clarified that while it is true that there are no political interference or oversight that may affect the own tasks and decisions of the body, being essential to indicate that the Commission responds to purely technical criteria, situation that has remained after so many years.

25. Finally, it should be noted that for the growth and development of the competition policy, it is essential that the body begins a period of change with the sole aim of achieving the best results in the exercise of its functions that have been assigned to it