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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –  
Contribution from Costa Rica**

**- Session III -**

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This contribution is submitted by Costa Rica under Session III of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/icar](https://oe.cd/icar).

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## *Interactions between Competition Authorities and Sector Regulators*

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

#### **1. Background**

1. In Costa Rica, there are two administrative authorities responsible for enforcing competition regulations. The Commission to Promote Competition (COPROCOM) is the national authority for all markets except telecommunications, which falls under the Superintendency of Telecommunications (SUTEL), the telecommunications regulatory body.
2. With the enactment of the Strengthening of Competition Authorities Act, N°9736, dated September 5, 2019, both authorities were given the possibility of signing cooperation agreements and their scope of cooperation possibilities was extended. COPROCOM's relationship with other important sectoral regulators, such as the financial sector and the public transport sector, was also established.
3. Both authorities acknowledge the importance of interacting between them and with other sectoral authorities to better fulfill their purposes. Consequently, they have formal instruments and channels of informal cooperation at their disposal, if possible, in accordance with the legal system.

#### **2. Common regulations governing the interactions of both competition authorities with sectoral regulators**

4. At present, COPROCOM is an entity with “maximum degree of de-concentration” under the Ministry of Economy, Industry and Commerce (MEIC), which has independence in its various duties and competences, including the signing of agreements (Act N°9736, Section 2, and Act N°7472, Section 21). On the other hand, since its establishment, SUTEL has instrumental legal personality and has had the power to sign agreements (Act N°7593, Section 59, and Act N°8642, Section 52).
5. Both authorities, each within the scope of their competence, have duties both for the protection of competition (by investigating anticompetitive practices and merger control) and for the promotion and advocacy of competition (by promoting the elimination of regulatory barriers to the operation of markets, issuing market studies, and conducting promotional and training activities, among others).
6. In order to achieve these purposes, Act N°9736 provides for some coordination mechanisms between the two competition authorities, such as cooperation agreements and exchange of information, guidelines, and unification of criteria, drafting of regulations and other secondary rules, challenging rules and administrative actions, and market studies.
7. Section 26 of Act N°9736 authorizes the Superior Body of each competition authority to enter into cooperation agreements with public and private entities, either national or international, and in particular, but not limited to, regulatory and supervisory bodies of the financial system. The purpose is to facilitate the performance of the duties of each competition authority.
8. Furthermore, Section 25 of the abovementioned law sets forth that these agreements may establish mechanisms for collecting evidence and conducting investigations within and outside the national territory; exchanging information facilitating the investigation of anti-competitive

behavior and mergers; conducting market studies; promoting the elimination of unnecessary restrictions on free and open market competition; facilitating technical cooperation and the exchange of experiences, and others that are related to the duties of each competition authority. Where appropriate, these agreements must provide adequate mechanisms to protect the confidential information exchanged, in accordance with the regulations in force on the matter.

9. By exercising this power, COPROCOM signed international cooperation agreements with the following entities:

- Central American National Competition Authorities Network (RECAC), including counterparts in Central America, Panama, and the Dominican Republic.
- National Competition Commission, CONACOM, Paraguay.
- Administrative Council for Economic Defense, CADE, Brazil.
- Federal Economic Competition Commission, COFECE, Mexico.<sup>1</sup>
- Superintendency of Industry and Commerce, SIC, Colombia.
- National Economic Prosecutor, FNE, Chile.

10. The relationship of COPROCOM with other competition authorities, such as the Spanish National Markets and Competition Commission (CNMC), the UK Competition and Markets Authority (CMA), the US Federal Trade Commission (FTC) and the US Department of Justice (DOJ), allow for cooperation between authorities without the need for signing of any agreement.

11. International cooperation actions have enabled COPROCOM to receive training for its technical body, obtain information for the preparation of market studies or case analysis, receive feedback on legal instruments such as guidelines, regulations, and manuals, and obtain consulting on forensic lab equipment procurement, as well as market intelligence tools, among others.

12. At national level, COPROCOM has entered into a cooperation agreement with the MEIC, a cooperation agreement with SUTEL, and is executing memoranda of understanding with the following national bodies:

- National Council for Financial Supervision (CONASSIF)
- Council of Public Transportation (CTP)
- Central Bank of Costa Rica (BCCR)

13. The above instruments are detailed below.

14. On the other hand, SUTEL has entered into cooperation agreements with:<sup>2</sup>

- Regulatory Authority of Public Services (ARESEP)
- Mexican Federal Economic Competition Commission, COFECE
- Federal Telecommunications Institute of Mexico, IFT
- Superintendency of Competition of El Salvador

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<sup>1</sup> The agreement with COFECE was signed together with SUTEL.

<sup>2</sup> See: <https://www.sutel.go.cr/pagina/contribuciones-y-convenios-internacionales>.

### 3. Interactions between COPROCOM and SUTEL

15. Several international organizations, in comparing the different existing models at global level, have pointed out that the model chosen by our country, in which two competition authorities interact (a general authority and a sectoral authority), requires special coordination and coherence in their policies.<sup>3</sup> Being aware of the above, both authorities attach great importance to this interaction, thus having a close relationship since the creation of SUTEL.

16. In terms of specific competition duties, for the investigation of anticompetitive practices and merger control activities, each authority has their exclusive powers and competences in their respective markets, although SUTEL with mandatory consultation to COPROCOM.

17. In these cases, Section 55 of Act N°8642 provides that, prior to any final decision by SUTEL in procedures investigating monopolistic practices and merger analysis, SUTEL will seek COPROCOM's opinion. This criterion is not binding on SUTEL, but to set aside, it must justify its decision and requires a qualified majority.

18. Pursuant to the above legal provision, advocacy or competition promotion activities may be carried out in a coordinated manner between the two authorities.

19. This coordination possibility is compatible with both authority's independence and aims to avoid duplicating efforts and contradictions. While both have their own aims and decision-making powers, they are intended to serve the same purpose, so cooperation between the two is of great practical use in the exercise of their duties.

20. There are several situations in which COPROCOM and SUTEL interact or could interact: coordination and cooperation, joint activities, and even the possibility of conflicts of legal jurisdiction.

21. In matters of coordination and cooperation, both authorities are constantly working to establish formal and informal cooperation mechanisms to seek consistency in the application of the Law, to share best practices, and in general to collaborate in the execution of the duties established by the Law to each of them, all in accordance with international best practices.

22. Similarly, there are certain dissemination activities which, concerning the same subject matter, both authorities can carry out jointly to seek better fulfillment of their purposes and a more efficient use of their resources.

23. Furthermore, there is a project to create a protocol which could further clarify the delimitation of competences between the two bodies. The foregoing in the event of potential conflicts of jurisdiction in the specific cases in which it is not clear which authority must enforce or involve aspects that fall within the competence of both. All this aiming to ensure legal certainty for all parties, especially those subject to government regulation.

24. The relationships mentioned are not hierarchical but arise from the power of coordination that aims to avoid duplication of and omissions in administrative duties so that they can be performed rationally and orderly. In this spirit, the parties signed an "*Inter-Institutional Competition Coordination and Cooperation Agreement between the Commission to Promote Competition (COPROCOM) and the Superintendency of Telecommunications (SUTEL)*",<sup>4</sup> dated November 27,

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<sup>3</sup> UNCTAD. (2010). Model Law on Competition - Chapter VII. Geneva, Switzerland: United Nations Conference on Trade and Development.

<sup>4</sup> [https://www.coprocom.go.cr/publicaciones/convenios/Convenio%20Cooperacion%20COFECE-COPROCOM-SUTEL%20\(Firmado\).pdf](https://www.coprocom.go.cr/publicaciones/convenios/Convenio%20Cooperacion%20COFECE-COPROCOM-SUTEL%20(Firmado).pdf) y <https://www.sutel.go.cr/pagina/contribuciones-y-convenios-internacionales>.

2019, that highlights the inter-institutional coordination and cooperation relationships between competition authorities in Costa Rica. The objectives of this agreement are:

1. “Establishing technical coordination and cooperation mechanisms in matters of competition, in order to ensure the consistent enforcement of national competition law.
2. Establishing general collaboration commitments to carry out training, promotion and protection of competition actions, exchange of information, research, preparation of technical regulations and development of internal policies.
3. Any other activity that facilitates the fulfillment of the parties’ responsibilities regarding competition.”

25. The agreement includes, among its coordination activities, efforts such as a joint discussion of cases and enforcement of competition rules, joint opinions, technical cooperation through the exchange of officials, practices, and internships, as well as the possibility of mutual consultations between the parties in order to achieve consistency in the enforcement of competition rules.

26. Formal relationships between the agencies and the implementation of this agreement have been positive and smooth. Joint dissemination activities have been carried out and joint guides have been issued, such as the Leniency program guide “*Guide to the Waiver of Benefits and Reduction of Penalties Program*”,<sup>5</sup> and they are currently working on the “Guide to Detect Collusive Tenders” with the collaboration of Inter-American Development Bank (IDB). In some cases, for convenience, they have also chosen to do so separately.

27. At an informal level, officials from both agencies also have frequent meetings to discuss various issues, follow-up on joint projects, inquire on the enforcement of legal regulations, among others. Due to its immediacy, this mechanism is one of the most effective.

#### 4. COPROCOM'S interactions with other sectoral regulators

28. The reforms of competition laws also introduced changes and clarifications to the interaction of COPROCOM with some other sectoral regulators.

##### 4.1. Relationship with the superintendencies of the financial sector

29. For the markets regulated or supervised by the superintendencies of the financial sector, COPROCOM, in general, has the competence to analyze both economic concentrations in the sector and anti-competitive conducts, although with some caveats.

30. In cases of prior analysis of merger in this sector, a binding consultation to the National Council for the Supervision of the Financial Sector (CONASSIF), the highest authority among regulators in this sector, is required, and CONASSIF must indicate whether, from a prudential point of view, it shall issue the final resolution of the concentration process. The above aims at protecting and mitigating the risks to the solvency, soundness, and stability of the entities or the financial system, as well as protecting financial consumers. In cases where CONASSIF decides, there is an optional and non-binding consultation to COPROCOM by the regulator.

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<sup>5</sup> Available at: [https://www.coprocom.go.cr/publicaciones/Guias\\_para\\_investigacion/Prog\\_BenExon\\_ReduSanciones.html](https://www.coprocom.go.cr/publicaciones/Guias_para_investigacion/Prog_BenExon_ReduSanciones.html) y <https://sutel.go.cr/guias-competencia>

31. In the case of monopolistic conducts, COPROCOM has the competency to investigate and decide, but it must inform the appropriate financial supervisory body if any special proceedings are started that involve at least one regulated or supervised entity.

32. Finally, all superintendencies in this sector are under the obligation of reporting anti-competitive practices to the COPROCOM and the complainant may intervene as an interested party in the corresponding proceedings.

33. In order to agree on the relevant regulatory mechanisms, the same law (under transitional provision XII) sets forth COPROCOM's obligation to establish CONASSIF's coordination mechanisms within a certain term. Accordingly, a preliminary version of the Memorandum of Understanding was sent to CONASSIF on January 2022 in order to promote and strengthen a voluntary cooperation framework between the parties.

34. In April 2022, COPROCOM again sent to CONASSIF the result of a work session held between the two entities on March 2022. In this new version, COPROCOM includes some additional recommendations that allow training and information dissemination activities, as well as the exchange of relevant information to detect, account for, and prevent monopolistic practices (absolute and relative) and anticompetitive mergers. The foregoing under the terms of the regulations that govern confidentiality.

35. CONASSIF is analyzing the proposal submitted by COPROCOM in order to continue with all administrative procedures necessary for signing the instrument being studied.

#### **4.2. Relationship with the Council of Public Transportation**

36. The same obligation mentioned above applies to the Council of Public Transportation (CTP). Act N°9736 provided for the obligation to establish all coordination mechanisms necessary between both entities in order to contribute to the fulfillment of their institutional objectives and to develop a cooperation framework that would allow the promotion of competition conditions in the national public transportation sector through the sound and effective enforcement of competition policies and rules for the efficient operation of such market.

37. Accordingly, a preliminary version of the Memorandum of Understanding was sent to the CTP on January 2022 in order to promote and strengthen a framework for voluntary cooperation between the parties.

38. COPROCOM has insisted on getting feedback on the progress made in the review of the document submitted. However, the CTP is still analyzing the proposal sent by the National Competition Authority.

#### **4.3. Relationship with the Ministry of Economy, Industry and Commerce**

39. The MEIC and COPROCOM signed an Inter-institutional Cooperation Agreement on March 9, 2022, valid through November 18, 2023 (extendable as long as the resources necessary for the fulfillment of its duties under Act No. 9736 are not available) so that MEIC provides a series of resources to COPROCOM, in order to collaborate with the correct performance of its duties, including: a) the physical space currently used by the Technical Body on the fifth and sixth floors of the ASEBANACIO building where the MEIC facilities are located, free of charge; b) parking spaces for each of the Commissioners, team leads, and Director; and c) the computer equipment and office furniture that COPROCOM officials have been using so far.

40. In addition, the Inter-Institutional Agreement allows the provision of other auxiliary services free of charge in accordance with transitional provision III of Act No. 9736, including: a) transport in the Metropolitan Area to attend meetings and to carry out notifications; b) training spaces for COPROCOM; c) the institutional cafeteria for COPROCOM's staff; d) access to the

Telecommunications Network, including a space within the servers to back up COPROCOM's information; e) Internet service and e-mail service; f) access to printing and photocopying equipment; g) cleaning, electrical power, telephone, telecommunications and drinking water services; h) services in the following areas: human resources; provisions; finances-accounting; legal counsel (only regarding administrative procedures related to powers of attorney and certifications); information technologies; communication; information management and filing; planning; all of the above for up to a quarter of the monthly time (equivalent to 40 hours).

41. With regard to the audit service, the agreement establishes that COPROCOM shall be audited by MEIC's Internal Audit, as set forth in Section 18 of Act No. 9736.

42. In consideration of MEIC's contributions, COPROCOM undertakes to the following:

- Provide participation spaces to MEIC officials in the training courses it offers, provided these are open to the public.
- Carry out activities of mutual interest.
- Collaborate with the MEIC in carrying out projects, programs, and trainings aimed at SMEs, which are related to the subject of competition.
- Include in the 2023 and 2024 budgets an item relating to the payment of cleaning services, and printing and office supplies.
- Compliance by COPROCOM officers, while in the premises provided, with MEIC's internal bulletins on the use of facilities, dress codes, office hours, conditions of access to and exit from the building, use of the cafeteria, and requests to use the training room.
- Carry out notifications with its own staff, once COPROCOM has the budgetary resources to carry out these duties.

43. As long as COPROCOM does not obtain the resources from the ordinary government budget, the MEIC will continue to provide these facilities.

#### **4.4. Relationship with the Central Bank of Costa Rica**

44. In order to comply with transitional provision XII of Act N°9736 and COPROCOM's obligation to establish mechanisms for inter-institutional coordination, an agreement is being reached with the Central Bank of Costa Rica to issue a Memorandum of Understanding. The objective of this MoU is the promotion and strengthening of a voluntary cooperation framework between the parties that allows, among other things, to carry out training and information dissemination activities, as well as exchanging relevant information to detect, account for, and prevent monopolistic practices (absolute and relative) and anticompetitive mergers; and to enter into loan agreements for officials for the execution of specific projects. The foregoing under the terms of the regulations that govern confidentiality.

45. On August 30, 2022, COPROCOM met with officials of the Central Bank of Costa Rica. As a result of this working session, COPROCOM is collecting information to submit to the Central Bank, in order to note the considerations and benefits that this entity would obtain in the event of entering into an agreement with the National Competition Authority.

### **5. SUTEL's interactions with other sectoral regulators**

46. As stated above, legislators created a sectoral competition regime applied by SUTEL, a body with "maximum de-concentration" under the Regulatory Authority of Public Services of Costa

Rica (ARESEP). ARESEP is a decentralized public institution of Costa Rica that regulates the country's public services, including water and sewerage, electricity and natural gas, hydrocarbons, infrastructure for public transportation.

47. Under this organic relationship, ARESEP maintains some decision-making powers over SUTEL, which, although do not directly influence the implementation of competition rules, have some administrative interference with the organization as a competition authority. For example, regulatory power, establishing general rules governing labor organization and relations, remuneration schemes, creation of positions, and some others of administrative nature.

48. In order to facilitate the fulfillment of their objectives, they signed an “*Inter-Institutional Cooperation Agreement for Logistic, Administrative and Advisory Support*”.<sup>6</sup> It has an administrative rather than a substantive scope.

49. The development of this relationship has been quite positive, and since its establishment as a competition authority, SUTEL has benefitted from the valuable support of ARESEP and from its strengthening following the recent reform. As such, ARESEP, employing its administrative authorities, has supported SUTEL in the internal processes of restructuring, creation of new positions, and issuance of regulatory regulations.

50. At present, SUTEL does not have cooperation agreements with other regulators, given its telecommunications specialty, which does not prevent it from signing any in the future, should this prove relevant.

51. As seen from the actions of both competition authorities, the importance and emphasis given to the interaction between them and other regulators to fulfill their purposes are evident.

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<sup>6</sup> Available at: [https://sutel.go.cr/sites/default/files/licitaciones/05219-sutel-dgo-2017\\_solicitud\\_de\\_convenio\\_de\\_cooperacion\\_apoyo\\_entre\\_aresep\\_y\\_sutel\\_junio\\_2017.pdf](https://sutel.go.cr/sites/default/files/licitaciones/05219-sutel-dgo-2017_solicitud_de_convenio_de_cooperacion_apoyo_entre_aresep_y_sutel_junio_2017.pdf)