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Cross-border Mergers – Contribution from Costa Rica

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Cross-border Mergers

– Contribution from Costa Rica (SUTEL) –

1. Background

1. Cross-border mergers create a series of regulatory and competition policy challenges that arise, when companies operating in different countries merge and the transactions has the potential to affects markets in more than one jurisdiction. These cross-border mergers can significantly impact on competition and market performance, as the companies involved may operate globally, generating both positive and negative effects for consumers and local economies.
2. Cross-border mergers can lead to market power concentration, which could reduce competition in local or regional markets. For instance, a merger between companies from different countries could result in fewer options for consumers, increased prices, or reduced innovation. Often, competition authorities must coordinate with one another to evaluate the effects of the merger, which can be a complex task and sometimes a slow process due to the differing laws and approaches adopted by each country.
3. Such transactions can potentially disrupt competition not only within a country but also in international markets, affecting entire regions. A merger between companies in different countries can have implications for other related markets, even if they are not directly involved in the transaction.
4. To address the issue of cross-border mergers, competition authorities from different countries often cooperate and coordinate their efforts to avoid contradictory outcomes and ensure that the adopted measures do not harm competition at an international level. However, cooperation among authorities can be complex due to differences in legal frameworks and national interests.

2. Case Analysis

5. In 2019, *Telefónica S.A.U. (Telefónica)*, under its brand *Movistar*, announced its exit from the Central American region, leading to a series of mergers and acquisitions. Telefónica sold its operations in Central American countries to two specific buyers: *América Móvil*, operating under the brand *Claro*, and *Millicom International Cellular*, operating under the brand *Tigo*.
6. Specifically, *Telefónica* sold its operations in Guatemala and El Salvador to *Claro* for a total of US\$648 million and sold its operations in Nicaragua, Costa Rica, and Panama to *Tigo* for US\$1.65 billion.
7. Central America is a market with significant economic integration through institutions like the *Central American Integration Secretariat (SIECA)*; however, it is not yet considered a single market. Despite this, many multinational companies take strategic and investment measures, viewing the region as an integrated whole.
8. In the telecommunications sector, the networks deployed in Central America demonstrate the convergence of regional operators whose operations are cross-border, with

some policies supporting this commercial strategy, such as the elimination of international roaming charges amongst various regional operators.

Figure 2.1. Major Regional Telecommunications Operators in Central America, 2024



9. *Movistar's* exit from Central America had the potential to generate significant impacts on competition in the telecommunications market, both in terms of mobile services and access to broadband internet and subscription television. However, the effects for each country could differ based on the types of services offered by the company. It was evident that the purchasing companies were major service providers in the region. For example, with the acquisition of Telefónica's businesses, *Millicom* would become one of the leading mobile service provider in Central America.¹

10. Below is a chronological summary of the main aspects of the transaction at the Central American level:

- a. **January and February 2019 - Initial Announcement:** *Telefónica* announces an agreement to sell its operations in Guatemala and El Salvador to *América Móvil*. It also announces the sale of its operations in Nicaragua, Panama, and Costa Rica to *Millicom*.
- b. **January 2019 - Transaction Completed in Guatemala:** 100% of *Telefónica* Guatemala's operations were transferred to *América Móvil*, as Guatemala did not have a competition authority at that time. Subsequent regulatory processes were carried out.²
- c. **May 2019 - Transaction Closed in Nicaragua:** The transaction between *Telefónica* and *Millicom* was finalized.
- d. **May 2019 to August 2020 - Rejection and Conditional Approval of the Transaction in El Salvador:** The Superintendence of Competition (SC) had rejected two requests made by *América Móvil* for *Telefónica's* operations in El Salvador due to admissibility issues. The first request, processed in May 2019, was rejected for not meeting competition law requirements. The second request, submitted in June 2019, was declared inadmissible for incomplete information. A third request submitted in November 2019 was considered by the Salvadoran competition authority, which approved it with conditions, such as the return of

¹ <https://forbescentroamerica.com/2019/08/14/este-es-el-impacto-de-la-salida-de-telefonica-en-centroamerica>

² <https://www.prensalibre.com/economia/compra-entre-telefonicas-que-sigue-ahora-que-claro-adquirio-a-telefonica-en-guatemala/>

spectrum resources by *Claro*. Notably, due to the COVID-19 pandemic in 2020, the analysis of the transaction in El Salvador had to be suspended for reasons of force majeure. Ultimately, *Telefónica* and *América Móvil* withdrew from the transaction in El Salvador, rescinding their purchase agreement.³

- e. **August 2019 - Transaction Approved in Costa Rica:** The Superintendency of Telecommunications (SUTEL) authorized the merger request submitted by the companies through resolution RCS-221-2019⁴ as the sectoral competition authority. However, despite SUTEL's approval, the transaction did not materialize in Costa Rica due to commercial differences between the parties.
- f. **August 2019 - Transaction Approved in Panama:** The Consumer Protection and Competition Defense Authority (ACODECO) of Panama approved the merger between *Telefónica* and *Millicom*, determining that the operation did not generate negative effects on competition.⁵

Figure 2.2. Outcomes of Transactions Related to Movistar's Exit in Central America



11. As a sectoral competition authority, SUTEL evaluated the merger request based on Act 8642, the criteria established for determining substantial market power according to Act 7472, its Telecommunications Market Competition Regulation, and the applicable Merger Analysis Guidelines at that time, as Act 9736 and its Regulation were not in effect.

³ <https://www.sc.gob.sv/index.php/cronologiasc-america-movil-telefonica/>

⁴ Disponible en: https://www.sutel.go.cr/sites/default/files/45_concentracion_millicom_telefonica.pdf

⁵ Resolución DNLC-MC-016-19 disponible en: https://tableroquejas.acodeco.gob.pa/uploads/pdf/nuestra_labor/ResolucionTelefonicas_22Ago2019.01_27_2020_12_27_44_p.m.pdf

An overlap in certain telecommunications services was identified, which would have horizontal effects, allowing Millicom to expand its operations in Costa Rica by offering mobile services, thus generating product conglomerate effects. As previously noted, the notified operation was part of Telefónica's regional sale to Millicom and América Móvil, representing a process that marked Telefónica Spain's exit from these Central American countries.

12. In the respective analysis, it was indicated that the substitutability of some of the retail telecommunications services involved in the transaction with foreign-origin services, was limited by technical constraints associated with network coverage, making it practically impossible for consumers to turn to international markets. Consequently, the analysis focused on the national effects of the transaction rather than assessing its impact on foreign markets.

13. As part of the collaborative efforts between competition authorities, informal consultations were conducted with other jurisdictions. In this sense, SUTEL's membership in the Central American Network of Competition Authorities (RECAC), established in 2012 as an organization that groups together the various competition authorities from Central American countries, proved to be invaluable. It allowed SUTEL to connect with competition authorities in the Central American region. The objective of RECAC is to promote cooperation and the exchange of information among authorities to strengthen competition defense in the region.

14. During the processing of this transaction, SUTEL benefited from informal contact, particularly with the competition authority in El Salvador.

3. Conclusions

15. SUTEL's experience in this case, highlights the importance of establishing cooperation mechanisms within authorities from other jurisdictions to gain a broader perspective on regional transactions. However, it also reflects the challenges posed by differing regulatory frameworks and requirements in each specific jurisdiction, which can lead to disparate outcomes from various authorities.

Cross-border Mergers

- Contribution from Costa Rica, COPROCOM -

Evaluation of Cross-Border Mergers in the Costa Rican Market: Perspectives and Challenges

1. Introduction

1. Cross-border mergers have become increasingly relevant in the context of globalization, international trade, and market integration. These agreements involve companies established in different jurisdictions and, as a result, bring complex challenges for competition authorities, especially in developing economies.
2. For the Commission to Promote Competition (COPROCOM), the analysis of these transactions requires a keen understanding of both the local impact and the global market structure. In Costa Rica, as in other countries with developing economies, the implementation of competition policies aims to balance openness to international investments with the protection of local consumers against potential monopolistic practices and market abuse that may arise from these concentrations.

2. The Case of JetBlue Airways and Spirit Airlines⁶

3. The recent case of the proposed merger between JetBlue Airways and Spirit Airlines, analyzed by COPROCOM, illustrates the complexity of cross-border mergers and underscores the importance of international coordination and the need to adapt to local realities. This analysis involves not only the competitive conditions in the passenger air transport routes defined as relevant markets by COPROCOM, but also an assessment of the conditions that competition authorities in other jurisdictions may impose to mitigate the adverse effects of a merger impacting multiple markets.
4. The objective of this analysis was to determine whether the acquisition of Spirit by JetBlue could affect competition in the passenger air transport market, particularly on the routes that both airlines operate between San José and Miami, and between San José and Orlando.
5. JetBlue and Spirit are airlines with a broad international presence. JetBlue operates in more than 100 destinations in the U.S., the Caribbean, Latin America, and Europe, while Spirit serves 85 destinations in the U.S., the Caribbean, and Latin America. The acquisition would expand the network of destinations under JetBlue's control, and according to the

⁶ COPROCOM VOTE-PUBLIC-020-2023. COMMISSION TO PROMOTE COMPETITION, at fifteen hours and forty-five minutes on the twenty-ninth of May, two thousand twenty-three.

proponents, could generate synergies and economies of scale on international routes, especially in Latin America.

6. In the context of Costa Rica, this merger meant that a single operator (JetBlue) would control both airlines on routes between San José and the destinations of Orlando and Miami, thereby reducing the options for direct flights from Costa Rica to the U.S. on routes heavily used by national travelers.

7. The relevant market analysis focused on passenger air transport services between Costa Rica and the U.S., specifically on the San José - Miami route (Miami International Airport and Fort Lauderdale-Hollywood Airport) and the San José - Orlando route. COPROCOM determined that the relevant market consists of direct flights on these routes, as flights with layovers are not viable substitutes due to increased time and costs for consumers.

8. Regarding market share and competitive structure, the San José - Miami route is highly concentrated, with several major operators such as American Airlines, Avianca, and Frontier. However, with the merger, the combined share of JetBlue and Spirit would significantly increase, which would raise the HHI (Herfindahl-Hirschman Index), used to measure market concentration.

9. On the San José - Orlando route, this market is even more concentrated, and with Frontier's exit in 2023, JetBlue and Spirit were the only operators of direct flights on this route, resulting in an effective monopoly.

10. The potential effects of the transaction were divided into two categories: unilateral effects, where the merger could allow the merged entity to raise prices and reduce quality without facing significant competition, especially on the San José-Orlando route, where the merged entity would be the sole direct provider; and coordinated effects on the San José-Miami route, where the reduction in the number of operators could facilitate coordination among the remaining airlines, increasing the risk of anti-competitive practices such as coordinated fare increases.

11. Since this is a transaction between U.S. companies, the merger required approval from U.S. authorities and, due to its cross-border impact, also from Costa Rica's competition authority (COPROCOM).

12. The "Open Skies" agreements between the U.S. and Costa Rica facilitate the entry of new airlines on routes between the two countries, although operational barriers persist in practice, such as the availability of slots at airports and high entry costs. The open skies framework ensures theoretical competition, but COPROCOM has identified practical barriers that limit the emergence of new competitors, especially on direct flight routes.

13. In Costa Rica, air transport to the United States is strategic and is heavily concentrated among a few airlines. The merger between JetBlue and Spirit represented a consolidation that would increase concentration on flights to Orlando and Miami.

14. From a cross-border perspective, COPROCOM noted potential dominance on direct flights to these cities, where there are no effective substitute routes in other forms of transportation, which could increase fares and reduce service quality and availability, primarily affecting national travelers who frequently visit these vacation destinations.

15. Although the proponents argued that the merger could increase JetBlue's global competitiveness by consolidating its position in the international market, in Costa Rica the effect seemed to be the opposite due to reduced options for direct flights and the elimination of a key competitor, Spirit. This contrast in impact illustrates one of the complexities of

cross-border mergers, where global competitive benefits may conflict with negative effects in specific markets.

16. On the San José-Miami route, the dominance of a single operator could facilitate price and frequency coordination, hindering the entry of competitors and affecting consumers in Costa Rica.

17. As a result of the above effects, it was considered that there were elements associated with agent pricing that could be relevant to protect the interests of Costa Rican consumers, particularly the fact that the eventual price equalization resulting from the merger, as Spirit would disappear and JetBlue's commercial and pricing strategy would apply to Spirit's market share, could lead to an upward variation in the fares charged on the routes Spirit operates on the San José-Orlando and San José-Miami routes.

18. During the merger review process, meetings were held with the United States Department of Justice (DOJ) and the Competition Defense and Promotion Commission of Honduras. The Federal Economic Competition Commission (Cofece) in Mexico was also consulted, although it was determined that the transaction would not have a relevant impact in that country.

19. Based on this body's assessment, it was clearly determined that the commitments proposed by the parties were insufficient to address the identified effects of the transaction, and therefore the merger was not authorized.

3. The Case of InfraCo SpA by KKR and Telefónica Chile⁷

20. The notified case focuses on an economic concentration between KKR Alameda Aggregator L.P. (a subsidiary of KKR & Co. Inc.) and Telefónica Chile S.A. (a subsidiary of Telefónica S.A.). This concentration agreement involves the joint acquisition of indirect control of InfraCo SpA, a Chilean company focused on the construction and operation of fiber optic network infrastructure for the provision of wholesale telecommunications services in Chile. The Commission to Promote Competition (COPROCOM) in Costa Rica received and evaluated this concentration request, developing an analysis of the operation in different phases and technical, legal, and competition considerations.

21. In the case of the joint acquisition of InfraCo SpA by KKR and Telefónica Chile, the review conducted by COPROCOM addressed an operation that primarily affected Chile operationally. However, given the global reach of the involved parties and their presence in Costa Rica, the analysis focused on determining possible effects in the Costa Rican market.

22. KKR and Telefónica are multinational corporations with operations in multiple countries, and in this case, the acquisition of InfraCo SpA targeted the Chilean market, with an initial impact on its telecommunications infrastructure. The cross-border relevance arises from the corporate structure and economic influence of the companies in additional markets, including Costa Rica.

23. COPROCOM identified that KKR and Telefónica have a presence in Costa Rica through Telxius Telecom S.A., an entity that manages submarine cable infrastructure and is jointly owned by both companies. However, InfraCo does not have current or projected

⁷ COPROCOM VOTE-12-2021. COMMISSION TO PROMOTE COMPETITION, at ten hours and thirty-five minutes on the thirteenth of May, two thousand twenty-one.

operations in Costa Rica, which reduces the likelihood of a direct effect on the local market.⁸

24. COPROCOM treated the operation as a conglomerate concentration because InfraCo would operate exclusively in the Chilean market and does not compete or have plans to compete in Costa Rica. Nevertheless, in a cross-border concentration analysis, it is essential to consider the entry barriers that InfraCo would face if it decided to expand its operations into the Costa Rican market.

25. Among these barriers, regulatory requirements in Costa Rica were identified, such as the need to establish a subsidiary and comply with local telecommunications regulations, which involves a significant initial investment. This analysis of regulatory and financial obstacles is common in cross-border mergers, where evaluating future expansion is key to defining potential risks.

26. COPROCOM determined that there were no competitive overlaps in Costa Rica since neither InfraCo nor its products would be available in the country, and the only overlap in operations between KKR and Telefónica occurs with Telxius, which maintains its infrastructure operations unchanged due to this transaction.

27. In cross-border mergers, it is assessed whether the assets, capabilities, or rights acquired in one country could create anti-competitive advantages in other countries. In this case, COPROCOM concluded that the competitive incentives or market structure in Costa Rica would not be altered since the acquisition of InfraCo does not affect the assets or operational control of Telxius in Costa Rica.

28. The transaction was evaluated and authorized in Costa Rica under criteria common to cross-border mergers, where a country without immediate operations of the involved parties, reviews and authorizes the transaction if there are no anti-competitive effects in its market. The absence of market effects was prioritized, considering the entry barriers in the event of a possible expansion by InfraCo. This authorization underscores the role of local competition authorities in reviewing cross-border concentrations and ensuring that anti-competitive conditions do not arise in their markets, even in operations focused on other jurisdictions.

4. The Case of Barentz International B.V. (Barentz) and Distribuciones Industriales Variadas DIVSA S.A. (DIVSA)⁹

29. Barentz International B.V. is a subsidiary of the Cinven Group, a European investment firm that operates across multiple sectors and countries, while DIVSA is a Costa Rican company with regional operations in Central America and the Caribbean. By acquiring DIVSA, Barentz would expand its distribution network in sectors such as food,

⁸ InfraCo, in this case, does not specify products in the Costa Rican market, as it focuses exclusively on fiber optic infrastructure intended for the Chilean market. This means that it does not introduce tangible products or services that would compete in the Costa Rican market; instead, its operations are limited to the development and management of telecommunications infrastructure in Chile.

⁹ COPROCOM VOTE-011-2022. COMMISSION TO PROMOTE COMPETITION, at fifteen hours and thirty minutes on the twenty-seventh of April, two thousand twenty-two.

pharmaceuticals, personal care, and coatings, achieving direct access and greater control over these markets in Costa Rica and the region.

30. This cross-border operation represented an extension of Barentz's global supply chain, and the acquisition could facilitate consolidation and expansion in the ingredient markets¹⁰ of Latin America through its new direct reach in Costa Rica.

31. COPROCOM identified five relevant product markets in which Barentz and DIVSA operate, covering the food, personal care, pharmaceutical, coatings, and logistics sectors. These markets are largely competitive and feature a diversity of suppliers.

32. The geographical dimension of the market was defined as global, in line with similar cross-border mergers, given that ingredients are produced and distributed globally and can be imported into Costa Rica without significant restrictions.

33. COPROCOM found that entry barriers are low in the relevant markets, which is characteristic of many global ingredient markets. Access to health registrations is straightforward, and the products exhibit high substitutability due to their commodity nature. These characteristics facilitate the entry of new competitors into Costa Rica, mitigating potential negative effects of the concentration and promoting an open and competitive market structure. Additionally, Barentz's low market share in the food sector (less than 5%) was also a factor in dismissing the possibility of significant market power at the local or regional level.

34. Cross-border mergers are typically evaluated by considering whether the market power acquired in one country may have anti-competitive effects in another. In this case, COPROCOM determined that, despite Barentz's expansion in the region, the operation did not result in an increase in market power in Costa Rica or an alteration of the structure of the markets involved in the transaction. The presence of multiple competitors and the large number of actors importing similar products ensured that local markets would not be adversely affected.

35. COPROCOM also analyzed the risk of unilateral or coordinated effects, dismissing them due to the heterogeneity of the products and services, variability in customer needs, and diversity of suppliers in each relevant market.

36. The authorization was granted in Costa Rica under the criterion that this cross-border merger did not introduce significant market power risks or additional barriers. This exemplifies how cross-border mergers can be approved when the structure of local markets remains competitive and competition incentives in the country are not altered. Barentz's entry into Costa Rica through the acquisition of DIVSA is viewed as a conglomerate expansion with limited competitive effects.

¹⁰ **Food Industry:** Acids (for example, citric acid and ascorbic acid), amino acids and proteins, antioxidants and preservatives, carbohydrates, sweeteners and polyols (such as maltodextrin and sorbitol), food colorings, emulsifiers and thickeners (for example, lecithin and starches), fibers and encapsulations. **Personal and Home Care:** Surfactants (for cleaning and skincare products), fragrances, and biocides: preservatives and enzymes specific to personal care products. **Pharmaceutical Industry:** Active ingredients such as antibiotics and analgesics. Excipients (such as lactose and other tablet coatings). **Coatings:** Pigments, resins, and additives for paints and industrial coatings. Preservatives and driers specific to coatings.

5. The Case of Hapag-Lloyd Aktiengesellschaft (Germany) and SAAM Ports and SAAM Logistics (Chile)¹¹

37. The acquisition of SAAM Ports by Hapag-Lloyd reflected a strategy of global vertical consolidation aimed at improving efficiency and reducing logistics and operational costs for Hapag-Lloyd in the Latin American region. Given that Puerto Caldera in Costa Rica is a strategic access point on the Pacific coast near the Panama Canal, the transaction allowed Hapag-Lloyd to establish a direct connection between its global network and Latin American markets, enhancing its competitiveness and efficiency in cargo handling.

38. According to the promoters, by vertically integrating maritime transport services with port services, Hapag-Lloyd could optimize routes and transit times, reduce intermediary costs, and achieve more efficient cargo flow. The transaction enabled Hapag-Lloyd to expand its operations in the region and position Puerto Caldera in Costa Rica as a key distribution and transshipment hub.

39. Although the transaction was of a vertical nature and did not present horizontal overlaps, sectoral regulations were considered in the analysis, as Costa Rica imposes strict regulations on port concessions through the Law of the Costa Rican Institute of Pacific Ports (INCOP) and the Regulatory Authority for Public Services (ARESEP). These regulations limited Hapag-Lloyd's ability to impose tariffs or restrict access to the terminal, preserving equitable access for other shipping lines.

40. The operation was also aligned with Chilean free competition regulations, as it involved the acquisition of a Chilean company (SAAM) by a German one. This requires an in-depth analysis of both legislations to identify and mitigate potential regulatory discrepancies, maximizing compliance and minimizing friction in executing the transaction.

41. A distinctive feature of cross-border mergers is the adaptation to different regulatory and entry barriers in each jurisdiction. In Costa Rica, port concessions involve significant investment and strict compliance with local regulations, presenting both cost and operational management challenges for Hapag-Lloyd. Operating the port terminal at Puerto Caldera requires capital-intensive investments to modernize and maintain port infrastructure. These costs represent entry barriers for new competitors, thus consolidating Hapag-Lloyd's position as one of the few access operators in the region.

42. As it is a regulated concession, Hapag-Lloyd cannot set prices based on supply and demand. ARESEP regulates port tariffs, requiring Hapag-Lloyd to operate in a highly controlled environment, minimizing the risk of blockages or price increases for competitors and end-users.

43. According to the parties, the transaction allows Hapag-Lloyd to strategically position itself in Latin America, a region where maritime trade is growing. With the acquisition of SAAM Ports, the German shipping company gains preferential access to the Pacific region, taking advantage of economies of scale in cargo management.

44. Hapag-Lloyd expressed its intention to expand the capacity of Puerto Caldera, responding to growing demand in the region and reinforcing its presence in trans-Pacific trade. This includes the potential to utilize the port as an inter-regional logistics center.

¹¹ VOTE COPROCOM-022-2023. COMMISSION TO PROMOTE COMPETITION, at fifteen hours and two minutes on the fourteenth of June, two thousand twenty-three.

45. It was estimated that consolidation in the Latin American market would help strengthen Hapag-Lloyd's network of services, improving its competitiveness against other major global operators, such as Maersk and MSC, who also have strategic interests in the region.

46. According to the promoters, vertical integration would improve operational efficiency by aligning the port with Hapag-Lloyd's routes in the region, facilitating continuous and high-quality service. Additionally, the cost reductions from economies of scale and logistical improvements would have a positive impact on customers by reducing transit times and enhancing access to containerized cargo logistics services. The transaction was authorized.

6. The Case of Ricolino (Candy Division of Grupo Bimbo from Mexico) and Mondelez International¹²

47. The acquisition of Ricolino (the candy division of Grupo Bimbo from Mexico) by Mondelez International (based in the Netherlands and parent company in the United States) is a strategic transaction that expands Mondelez's footprint in Latin America, with a particular impact on the Costa Rican market.

48. Mondelez's acquisition of Ricolino in a diverse and high-growth market like Latin America allows the company to consolidate its position in the region by leveraging Bimbo's existing infrastructure in Costa Rica and other Latin American countries. Additionally, it represents an opportunity to diversify its portfolio in the candy market by integrating Ricolino's popular product offerings (such as marshmallow chocolates) and accessing a broad consumer base with varied preferences. It also aims to increase logistical efficiency and reduce costs through the consolidation of manufacturing and distribution operations in the region.

49. COPROCOM considered that although the transaction represented a horizontal concentration in the chocolate candy market, it did not significantly affect competition due to Mondelez's moderate market share (16.5% after the concentration) and the strong presence of other competitors like Dos Pinos and Mars. This analysis suggested that Mondelez could not negatively influence prices or access to the markets involved in Costa Rica.

50. According to the promoters, the acquisition would expand Mondelez's access to a pre-existing distribution network, improving its ability to compete in Costa Rica without creating a significant barrier for other players due to the presence of multiple strong competitors in the country.

51. While Mondelez would gain greater control in the supply chain with the purchase of Ricolino, it would still face relevant competition from local and international companies, which limits its ability to unilaterally set prices or restrict supply.

52. The promoters stated that with expanded infrastructure, Mondelez could implement economies of scale, potentially reducing its operating costs and benefiting consumers in the Costa Rican market through competitive pricing and a varied product offering.

¹² VOTE COPROCOM-026-2022. COMMISSION FOR PROMOTING COMPETITION, at eleven hours and fifty minutes on August 11, 2022.

53. In Costa Rica, the requirements for sanitary registration and labeling for candy are manageable and do not constitute a significant barrier, allowing new participants to enter the market without excessive obstacles. This regulatory environment contributes to a healthy competitive dynamic and limits Mondelez's ability to block the entry of new competitors.

54. In a consumer sector like candy, brand loyalty to traditional companies like Dos Pinos in Costa Rica is a key factor that protects competition by making it difficult for any new player to dominate the market, even after a large-scale merger.

55. Ricolino's infrastructure facilitates efficient distribution in Costa Rica and other Latin American countries, which can help reduce costs and increase efficiency in getting products to the end consumer.

56. The acquisition offers Mondelez access to Ricolino's expertise and knowledge of the Latin American market, strengthening its ability to adapt its products and strategies to local and regional preferences.

57. Differences in business practices and corporate culture between Mondelez and Ricolino could slow down integration. However, the benefits of having established local brands like Ricolino can offset these challenges by facilitating product adoption in the market.

58. Furthermore, the acquisition may foster product innovation and expand Mondelez's offerings for Costa Rican consumers and others in Latin America. The combination of Ricolino's distribution infrastructure with Mondelez's innovation capacity could enable effective competition in a competitive market and meet changing consumer preferences.

59. The operational and cultural integration, along with a low regulatory risk market, suggests that the merger will allow Mondelez to expand its presence in the region without compromising competition or consumer choices in Costa Rica.

7. Conclusions and Recommendations

60. Many of these cases exemplify how cross-border concentrations present distinct challenges depending on the market structure of each country involved. To improve analyses and avoid conflicts in the results of each jurisdiction, we suggest the following:

61. **Strengthen Coordination Between Agencies:** Adopt common standards for the analysis of cross-border mergers, especially in developing economies that may require data and technical support from more experienced agencies.

62. **Design Remedies Adapted to Developing Economies:** Proposed solutions must be viable for the country's context, considering local entry barriers, such as access to airport slots and regulatory restrictions.

63. **Promote Post-Merger Monitoring Capacity:** It is essential to ensure that once a merger is approved, there is ongoing monitoring capacity to ensure that the commitments made are fulfilled according to local conditions.

64. Also, mergers and acquisitions involving digital platforms pose additional challenges due to their global structure, rapid technological evolution, and ability to operate across multiple jurisdictions simultaneously. To address these challenges, it is crucial that competition authorities adopt innovative approaches and share best practices when

analyzing such concentrations, considering factors like data access, innovation, and the potential exclusion of local competitors.

65. COPROCOM's experience in evaluating cross-border mergers demonstrates how competition authorities in emerging economies face challenges when reviewing such transactions, where the global reach of the merged companies may have profound repercussions on local markets. Cooperation and coordination among jurisdictions, as promoted by the OECD and the International Competition Network (ICN), are crucial to avoiding divergent outcomes and ensuring that implemented remedies address the specific needs of each affected market.

66. For Costa Rica, cross-border concentrations present an opportunity for integration and economic growth, if competition authorities can design regulatory frameworks that ensure effective competition and safeguard the interests of local consumers. This dynamic international collaboration in competition is essential for building a more equitable and efficient global market system.