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Competition in the Healthcare Sector – Contribution from Costa Rica

- Session II -

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More documentation related to this discussion can be found at: oe.cd/chthc.

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Competition in the Healthcare Sector

- Contribution from Costa Rica -

1. COPROCOM's role in promoting accessible and efficient healthcare markets

1. The Commission to Promote Competition (COPROCOM) has historically played (prior to the legal reform of 2019), a fundamentally corrective role in its interventions in markets linked to the healthcare sector. In this regard, various complaints have been processed and ex-officio investigations initiated, especially, in public procurement activities carried out by the country's main healthcare sector buyer, the Caja Costarricense de Seguro Social (CCSS). However, the publication of the "*Pharmaceutical Sector in Costa Rica*" in January 2025 marked a turning point in the evolution of COPROCOM's actions. Through this initiative, the National Competition Authority identified structural, behavioral, and regulatory malfunctions that affect the competitive process of the Costa Rican pharmaceutical sector and the healthcare sector in general. This work led to the formulation of specific recommendations to mitigate these failures, consolidating COPROCOM's preventive and proactive role, throughout competition advocacy efforts.

2. A second milestone of this institutional evolution was the lawsuit filed against the Executive Decree 44863-MEIC, entitled "*Regulation of the Maximum Gross Margins of Sale for all Medicines Registered with the Ministry of Health*". This decree's stated objective was to reduce medicine prices for end consumers; however, after the technical analysis conducted by COPROCOM, it was concluded that the proposed margins of sale scheme and the methodology employed, could be counterproductive on the competition process, market supply levels, and social well-being, generating adverse effects on competition across all active economic agents in the sector, the dynamics of distribution chains, and ultimately, harming consumers. From the Authority's perspective, regulatory interventions on prices must be based on robust factual diagnoses and a deep understanding of the market's structure and commercial dynamics, avoiding measures that, although well-intentioned, distort competition or limit the entry of new players.

3. Inter-institutional cooperation constitutes the most promising pivot point for integrating the Costa Rican Competition Authority's work in the healthcare sector. In recent months, COPROCOM has held talks and dialogue sessions regarding the findings and recommendations derived from the study of the pharmaceutical sector, sanctioned cases in the industry for bid rigging in public tenders¹, and formulated concrete regulatory proposals in healthcare matters, such as simplifying procedures associated with drug registrations and promoting the use of equivalent generic products. The next step identified is the formalization of cooperation mechanisms with other strategic actors, such as professional associations and CCSS, to strengthen technical coordination and regulatory coherence, promoting market competition and efficiency. These actions are supported by Articles 20, 21, 24, 25 and 112 of Law No. 9736, "Law on Strengthening the Competition Authorities of Costa Rica", which authorize COPROCOM to sign collaboration agreements and establish the duty of inter-institutional cooperation between public entities.

¹ In 2024, COPROCOM imposed sanctions on two bid rigging cases: Vote COPROCOM-046-2024 (pharmaceutical products), and Vote COPROCOM-034-2025 (healthcare supplies).

4. In structural terms, the Costa Rican market is characterized by a high concentration of international laboratories. The 10 largest laboratories account for 47.4% of the market, of which 9 are foreign and have registered innovative medicines. These laboratories set the base price of medicines, affecting the entire value chain. Meanwhile, wholesale drug distribution (drugstores) shows a moderate high concentration (the HHI ranged from 1,870 to 2,070 points in the 2021 to 2023 period, where at least three economic agents hold approximately 75% of the market. This level of concentration entails risks of potential abuse of dominant positions and/or tacit or explicit coordination within the industry. On the other hand, the retail pharmacy segment is characterized by low concentration at the national level (HHI of 665 points in 2023), although there is a trend towards vertical integration and potential discriminatory practices in pricing or specific commercial conditions. These factors highlight the importance of constant monitoring and preventive measures to ensure effective competition throughout the pharmaceutical supply chain.

5. In relation to gross profit margins, the market study shows that at the drugstore level, the weighted average margin is 20%, while at the pharmacy level, the average margin is 13%.

6. It should also be noted that one of the most important actors in the Costa Rican healthcare ecosystem is the CCSS, an economic agent that in many cases acts as a monopsonistic buyer of various lines of medicines and healthcare products. This position, while potentially enhancing the State's bargaining power in the market, favoring better contractual conditions for universal access to healthcare for the population, can also indirectly influence distortions in the private market pricing, generating incentives for supply displacement or price gaps between sectors.

7. Together, these actions reflect the consolidation of COPROCOM as an Authority that combines enforcement, prevention, and advocacy functions, seeking to actively influence the development of more accessible, efficient, and equitable healthcare markets for the Costa Rican population.

2. Beyond price in healthcare markets: access, quality and equity

8. In Costa Rica, as in other jurisdictions, the challenge of ensuring equitable access to healthcare and affordable medicines, are complex issues involving a plethora of economic agents and institutions. COPROCOM has identified, through its comprehensive study of the pharmaceutical sector, that barriers to competition, particularly regulatory inefficiencies, regulated business models, information asymmetries, quality biases promoted by trade associations, and structural concentration of certain markets, play a determining role in limiting access and undermining quality and equity in the provision of medicines. Addressing these barriers requires an expanded role for competition authorities, combining advocacy, evidence and data generation, inter-institutional cooperation, and the use of traditional enforcement tools.

9. The study of the pharmaceutical sector revealed that one of the main determinants of limited access to medicines is the inefficiency of the registration process. The long and unpredictable lead times of this process discourage entry by both innovative manufacturers and generic product providers. In practice, this delays the availability of new and affordable products, restricts consumer choice, and weakens the competitive pressure on incumbents. These delays and operating costs act as de facto barriers to entry, eroding potential savings for patients and the public healthcare system.

10. A second important finding relates to low public and professional trust in generic (unbranded) medicines, which perpetuates the segmentation between branded and generic

products. Physicians and patients often associate premium prices with higher quality, while generic alternatives remain underutilized despite meeting safety and efficacy standards. Such distrust, combined with limited promotion of therapeutic bioequivalence, contributes to a dual market in which affordability and perceived quality diverge significantly.

11. Regarding market structure, the study reveals moderate concentration in the stage of the value chain relating to wholesale distribution of medicines. According to the analysis, three wholesale groups are vertically integrated with pharmacy chains, offering them a more advantageous position in both the import and retail marketing of medicines. This type of integration allows the most relevant groups to influence supply conditions and prices, hindering access for independent pharmacies, especially in rural areas. COPROCOM warned that these configurations could limit effective competition and generate geographic inequalities in access to medicines.

12. The study also highlights the central role of the CCSS as the country's main institutional buyer, whose public procurement system allows it to obtain lower prices compared to the private market, thanks to its purchasing and negotiation capabilities. However, this duality between a public market with controlled prices and a private market with higher prices can generate significant differences in the availability and affordability of medications, depending on whether the patient accesses them through public or private channels.

13. At the household spending level, medications represent a particularly high burden for the average Costa Rican household. The study reports that medications represent approximately 43% of households' healthcare spending, while total healthcare spending is equivalent to 6% of the total Costa Rican household spending. These figures reflect that access to medications, especially in the private market, constitutes a considerable economic burden with regressive effects for lower-income Costa Ricans. This finding is corroborated by World Bank's data for 2022, which shows a value approximately 36% higher for the per capita healthcare spending in Costa Rica, compared to the average in Latin America and the Caribbean.

14. COPROCOM's approach to addressing these challenges has gone beyond the traditional enforcement of the Competition Law. In its aforementioned market study, the Authority combined qualitative interviews and quantitative data collection from laboratories, wholesale distributors, pharmacies, and public institutions. This methodological rigor provided an empirical basis for advocacy activities aimed at regulatory reforms. Among the study's core findings are the need to streamline regulatory procedures, strengthen confidence in generic medicines, and promote transparency in distribution practices. These recommendations recognize that, in the healthcare sector, the effectiveness of competition policy depends on its ability to complement healthcare regulation, rather than operate in isolation from it.

15. Regarding the advocacy of specific public policies, COPROCOM has emphasized regulatory efficiency as a prerequisite for equitable access. Simplifying the sanitary registration process through fast-track mechanisms, recognition of approvals from reference foreign agencies, and risk-based procedures, would reduce entry barriers for new players and strengthen the competitiveness of existing economic agents, without compromising safety or quality. Aligning national procedures with international best practices would reduce unnecessary administrative burdens and improve predictability, encouraging the timely entry of both generic and innovative products.

16. The Costa Rican Competition Authority has also prioritized public trust and information transparency. Raising awareness about bioequivalence, empowering pharmacists to dispense generic substitutes, and disseminating reliable information about

therapeutic equivalence, can reduce the informational barriers that perpetuate price disparities. Advocacy in this area intersects with consumer protection and public healthcare communication efforts, which require coordination between regulators, professional associations, and economic agents.

17. The results of this initiative transcend the private market. The study has improved public understanding of the structural causes behind high medication prices, shifting the debate from anecdotal perceptions of collusion to a more nuanced appreciation of regulatory and structural inefficiencies. This shift in narrative is essential to sustain informed public policy reforms. Furthermore, the findings have already influenced policy discussions within the Ministry of Economy, Industry, and Commerce, and the Ministry of Health, guiding proposals to eliminate regulations associated with price controls and modernize the industry's regulatory frameworks.

18. Competition policy in the healthcare sector should be conceived as a driver of both economic and social well-being. By identifying and addressing barriers to competition, COPROCOM's experience demonstrates that advocacy efforts can directly contribute to improving access, enhancing quality, and strengthening equity in healthcare systems. The Authority's ongoing efforts to align competition, regulatory efficiency, and public trust, offer a replicable model for other jurisdictions facing similar challenges.

3. Competition risks across the pharmaceutical value chain: pricing, IP and vertical integration

19. The Costa Rican pharmaceutical market illustrates how competitive risks do not apply solely to a single industry segment, but rather to all interactions along the value chain, from the patent and production phases to wholesale distribution and retail.

20. COPROCOM's study highlights that both upstream regulatory frameworks and downstream market structures can generate distortions that favor high prices and hinder market contestability, even in absence of overtly anti-competitive behavior. Understanding and addressing these interconnected risks requires a joint competition enforcement and advocacy strategy.

21. Regarding intellectual property, the study recognizes that patent and healthcare registration regulations can have indirect effects on competition. While no specific anti-competitive practices were identified, the document underscores the need for greater coordination between COPROCOM, the patent office, and the healthcare regulator to avoid duplication or unnecessary delays. This inter-institutional coordination is essential to ensure that intellectual property rights do not become artificial barriers to entry, preserving a balance between the protection of innovation and access to medicines.

22. Another relevant issue relates to pricing strategies arising from the high degree of segmentation between the public and private sectors. While the CCSS purchases medicines in large volumes through public bidding processes, obtaining lower prices than those in the wholesale market, private market prices remain high due to concentration and lack of transparency. In the absence of effective competitive reference pricing mechanisms or comparison systems, wholesalers and pharmacies can charge wide margins, generating significant price dispersion. Attempts by the Central Government to regulate profit margins (Executive Decree 44863-MEIC) have proven ineffective in reducing drug prices and even potentially disruptive, as they fail to address the structural inefficiencies that limit competition. In this regard, COPROCOM's position has been to promote reforms that strengthen competition, rather than direct price controls, since such reforms offer a more sustainable and effective path to affordability and access.

23. Regarding vertical integration, the study observed that a small number of wholesale distributors control a significant portion (75%) of the wholesale drug sales, with these wholesale distributors exhibiting commercial operations at the retail level (pharmacies). This type of integration could facilitate practices such as preferential supply to their own drugstores or differentiated contractual terms, which could limit the access of independent competitors and affect the diversity of offerings at the retail level. Such agreements could limit market access to other competing economic agents, restricting consumer choice and geographic coverage. While vertical integration can generate multiple economic efficiencies, such integration requires adequate oversight to ensure that these efficiencies do not transform into anticompetitive restrictions end customers.

24. From a competition enforcement perspective, these findings underscore the importance of data-driven analytical tools, capable of detecting both horizontal and vertical restraints in complex supply chains. COPROCOM's study combined traditional concentration indicators with sector-specific metrics, such as the length of registration delays, the number of suppliers per therapeutic code in public procurement, and the frequency of exclusive distribution contracts. This analytical framework strengthens the Authority's ability to identify foreclosure risks or potential abuses of dominant position even in markets characterized by high regulatory complexity and information asymmetries.

25. An emerging frontier in the Costa Rican healthcare sector relates to the use of digital systems and algorithmic pricing. Although not yet widespread in Costa Rica, the rise of e-commerce and online inventory platforms raises questions about potential algorithmic coordination and data-driven market segmentation. Therefore, it is advisable for competition authorities to develop technical capabilities for digital monitoring to ensure that these new tools used by economic agents in the market are not used to agree on or maintain parallel or artificially higher prices, or to illegitimately discriminate between consumers. In the case of Costa Rican public procurement, the publicity and transparency promoted by the Integrated Public Procurement System (SICOP) pose a competition challenge, given that the potential application of algorithms by competing economic agents, in a system characterized by frequent interactions, could facilitate the possibility of reaching and maintaining collusive agreements.

26. Institutional cooperation remains essential to address these challenges. The interaction between competition law and intellectual property regulation requires ongoing dialogue with the Ministry of Health, the patent office, and judicial authorities. By sharing technical expertise, COPROCOM seeks to ensure that decisions regarding the validity of patents, data exclusivity, and market authorizations consider their resulting effects on the degree of competition in the sector and the public interest. This coordination also facilitates the design of proportional remedies, such as licensing commitments or the elimination of restrictive distribution clauses, without undermining legitimate incentives on innovation.

27. Beyond the enforcement of the Competition Law, advocacy and policy reforms are indispensable. COPROCOM has promoted recommendations to simplify regulatory processes, increase transparency in medicine distribution, and strengthen confidence in the use of generic products, all of which contribute to reducing barriers to entry and fostering dynamic efficiency. The Authority's findings have guided national debates, including recommendations to eliminate price control decrees and reform the medicine registration system through more streamlined and transparent procedures, as well as harmonization with regional regulations and international health agencies with proven standards. By presenting these measures, which constitute pro-competitive reforms, COPROCOM underscores the complementarity bond between competition principles and public healthcare objectives.

28. The broader lesson from the Costa Rican healthcare experience is that effective competition in the pharmaceutical sector, does not depend solely on the ex-post application of the Competition Law. It requires ongoing analysis and engagement between regulators, public healthcare policy makers, and market players to identify risks in market developments, from patent strategies and the concentration of commercial distribution channels to new digital practices. Through its study and subsequent advocacy work, COPROCOM has strengthened its capacity to anticipate these challenges, contributing to a more competitive healthcare system.