Organisation for Economic Co-operation and Development

DAF/COMP/GF/WD(2026)21

Unclassified

English - Or. English

5 November 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

## Global Forum on Competition

# New Developments in Merger Remedies – Contribution from Costa Rica

**- Session II -**

10 December 2026

This contribution is submitted by Costa Rica under Session II of the Global Forum on Competition to be held to be held on 10-11 December 2026.

More documentation related to this discussion can be found at: oe.cd/gfc26.

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# *Costa Rica*

*"Behavioral remedies work better if market-tested and when appropriate monitoring mechanisms are put in place". (OECD, DAF/COMP/GF (2026)1).*

## TRC-CR Holdings, S.R.L. (TRC, CR) Acquisition of Corporación Arrocera Costa Rica, S.A. (CACSA, CR).

## 1. Introduction

1. Costa Rican competition law establishes a pre-merger control system based on the transaction's connection to Costa Rica, the acquisition or transfer of control, and individual and combined notification thresholds. The Commission for the Promotion of Competition (COPROCOM, also the National Competition Authority) approves mergers and/or acquisitions that are not expected to significantly hinder competition in specific, similar, or substantially related relevant markets.

2. The Costa Rican pre-merger procedure during its first phase of analysis may authorize a specific merger or acquisition, authorize it subject to compliance with remedies proposed by the notifying parties, or initiate a second phase of analysis.

3. In a second phase of analysis, COPROCOM may authorize the merger or acquisition (either unconditionally or subject to compliance with remedies proposed by the notifying parties), determine that the transaction gives rise to anticompetitive effects and grant the parties involved 30 business days to propose remedies, or prohibit the transaction, if no remedies that can effectively counteract the identified anticompetitive effects are available.

4. Pursuant to the Law for the Strengthening of Costa Rica's Competition Authorities (Law No. 9736), COPROCOM may also approve concentrations whose purpose or foreseeable effect is to significantly impede competition; however, in doing so, the National Competition Authority must assess whether the transaction generates efficiencies whose benefits outweigh its anticompetitive effects, whether the merger or acquisition is necessary to prevent productive assets from exiting the Costa Rican markets, or whether the anticompetitive effects can be offset through remedies imposed by COPROCOM's Board of Commissioners, provided that the interests of domestic consumers are protected.

5. Within this regulatory framework, in November 2024, TRC notified COPROCOM of its acquisition of exclusive control over CACSA, a company in which the commercial group associated with TRC already held a minority ownership interest.

### Table 1. Activities of the Acquiring and Target Firms Along the Rice Value Chain. Costa Rican Rice Market (2024)

| Value Chain Stage | Target Firm | Acquiring Firm |
|---|---|---|
| Rice Seed Production | ✓ | ✓ |
| Paddy Rice Trading | | ✓ |
| Paddy Rice Processing | ✓ | ✓ |
| Milled Rice Trading | ✓ | ✓ |

Source: Prepared by the authors based on the public version of COPROCOM Case File 098-2024-CE.

## 2. Nature of the Transaction and Remedies Implemented

6. COPROCOM's assessment of the acquisition of CACSA by TRC identified several competition risks in the Costa Rican Rice Market arising from the transaction. These competition concerns were primarily horizontal and vertical in nature.

### Table 2. Market Shares of Paddy Rice Suppliers in Costa Rica (2024)

| Supplier | Market Share [%] |
|---|---|
| Damboriarena Escosteguy | [30-40] |
| TRC | [30-40] |
| ADM Rice | [20-30] |
| Domestic Production | [10-20] |
| Others | [1-10] |

Source: Prepared by the authors based on the public version of COPROCOM Case File 098-2024-CE.

7. The first relevant market assessed by COPROCOM in its review of the TRC-CACSA transaction was the national supply of Paddy Rice, as this product constitutes the primary input for the target company's core business activity, rice milling and processing. Table 2. shows for the Costa Rican environment, the significance of three major international suppliers of paddy rice, together with the domestic production, as the major sources of supply for the agro-industrial rice companies operating in the country.

8. Regarding the commercialization of paddy rice, COPROCOM distinguished between barriers affecting domestic production and those associated with paddy rice imports. The former include access to suitable land for rice cultivation, certified seeds, capital requirements for the acquisition of machinery and irrigation systems, phytosanitary requirements, and agricultural and environmental permits. The latter comprise tariff regimes that have experienced abrupt changes, differentiated tariff rates depending on the region of origin, a 0% tariff under the CAFTA-DR agreement (which, while promoting imports could also generate trade diversion effects), sanitary and logistical requirements, significant capital requirements for port unloading operations, and the existence of supply contracts held by a limited number of agro-industrial firms operating in Costa Rica. Consequently, the National Competition Authority considered the barriers to entry in this segment of the Costa Rican Rice Market to be high.

9. On the Costa Rican Rice Market, from a vertical perspective, the economic influence of the business group associated with TRC is particularly noteworthy in the Paddy Rice supply segment. According to data from the National Rice Corporation

(CONARROZ)[1] and the Ministerio de Hacienda (Ministry of Finance, also MH), as well as the information presented in Table 2., TRC is one of the four largest suppliers of Paddy Rice to the Costa Rican market. Furthermore, it operates within an industry characterized by a C4 concentration ratio of approximately 85%.

### Table 3. Changes in Market Concentration: Paddy Rice Milling and Wholesale Distribution of Milled Rice in Costa Rica (2024)

| Value Chain Stage | HHI pre-acquisition | HHI post-acquisition | Δ |
|---|---|---|---|
| Paddy Rice Milling and Processing | 1,924 | 2,849 | 925 |
| Wholesale Distribution of Milled Rice | 1,638 | 2,453 | 815 |

Source: Prepared by the authors based on the public version of COPROCOM Case File 098-2024-CE.

10. At the horizontal level, the market for paddy rice milling and processing exhibited, following the acquisition: 1-) An HHI exceeding 2,800, with an increase of more than 900 points, and 2-) A C2 concentration index above 65%. Among the barriers to entry identified by COPROCOM in its analysis were the capital requirements associated with the provision of automation equipment for rice milling operations, logistical risks, relatively narrow commercial margins, the preference of major buyers (supermarket chains) for suppliers with proven performance records, and the substantial investment in infrastructure required to achieve minimum efficient production scales. In view of the National Competition Authority, these barriers are such that they can only be overcome by economic agents with robust financial backing.

11. The foregoing is also applicable, under the terms developed by COPROCOM, to the wholesale distribution of milled rice, a market characterized by major initial investment costs for commercial operators, performance-related requirements (allocation of duty-free import quotas based on local purchasing volumes in prior periods), payment conditions that must be negotiated with major buyers (supermarket chains), brand loyalty among end consumers for packaged rice products, and various certification requirements.

12. In general terms, the Costa Rican Rice Market has undergone a series of pro-competitive structural changes since 2022[2]. However, TRC's acquisition of CACSA took place within a market for homogeneous goods, characterized by a limited number of active economic agents, and relatively stable market shares over time. These conditions led COPROCOM to determine that remedies were necessary in connection with the notified transaction, to safeguard the level of competition in the Costa Rican Rice Market.

13. Additionally, despite the reduction of entry barriers in the industry following the 2022 reforms, the increase in imports experienced by the Costa Rican Rice Sector (both for

[1] CONARROZ: A non-state public entity with its own legal personality and assets which, pursuant to Law No. 8285, has as its primary objective the establishment of a framework governing relations between rice producers and rice agro-industrial firms, ensuring the rational and equitable participation of both sectors in this economic activity, while promoting the competitiveness and development of Costa Rican Rice Industry.

[2] Executive Decree No. 43642-MAG-MEIC-COMEX, which reduced import tariffs from 35% to 3.5% for paddy rice and from 35% to 4% for milled rice; Executive Decree No. 43643-MEIC, which eliminated the minimum price-setting scheme in the Costa Rican Rice Industry; and the possibility of duty-free imports under the CAFTA-DR trade agreement, under which rice may be imported at a 0% tariff rate.

Paddy Rice intended for processing and for Milled Rice), may not exert sufficient competitive pressure on the incumbent firms operating in the Paddy Rice Processing Segment (Domestic Rice Mills) and in the trading of Milled Rice. This is due to the presence of other significant industry structural components, including high sunk costs associated with market participation, pre-existing production commitments with major buyers (supermarket chains), complex logistical requirements, and quota-related restrictions (including tariff benefits granted to specific firms); these conditions limit, in the short term, the availability of viable, timely, and sufficient alternatives for switching suppliers in both the Paddy Rice Processing and Milled Rice Trading segments.

14. In this context, the principal anticompetitive risks identified by COPROCOM as a result of the acquisition of CACSA by TRC, were input foreclosure, raising competitors´ costs, customer foreclosure, and an increased likelihood of anticompetitive horizontal coordination.

15. To address these risks, COPROCOM proposed the implementation of behavioral remedies, including a corporate competition compliance program, the establishment of ethical walls to limit coordination and information exchanges among companies affiliated to TRC that have commercial activities in Costa Rica, and the monitoring and verification of the compliance commitments through the engagement of an independent external auditor.

## 3. Proposal and Negotiation of Remedies Between TRC And COPROCOM

16. During the first phase of analysis, and before COPROCOM's Board of Commissioners formally communicated to TRC the anticompetitive effects identified during the second phase of the assessment linked to its acquisition of CACSA, the notifying party did not submit any proposed commitments or remedies. This was due, in part, to differences between the notifying party's appraisal and COPROCOM's evaluation of the transaction's effects. While TRC placed greater emphasis on the minority shareholding interest that its affiliated group already held in CACSA, COPROCOM identified risks arising from the acquisition in a market characterized by a limited number of participants, high levels of concentration, and significant barriers to entry.

17. Costa Rican competition law establishes a two-phase procedure for the review of mergers and acquisitions. Ordinarily, during the first phase (within which COPROCOM must issue a decision within 30 calendar days), transactions that are not expected to significantly hinder competition in the market will be approved. During the second phase (within which COPROCOM must issue a decision within 90 calendar days), the notified merger and/or acquisition may be approved, approved subject to remedies, or denied.

18. With respect to remedies in merger control proceedings appraised by COPROCOM, Costa Rican competition law provides for the National Competition Authority, within its pre-merger notification framework, the capabilities to authorize a merger and/or acquisition during either the first or second phase of review, subject to compliance with remedies voluntarily proposed by the notifying party. Alternatively, during the second phase of the review, if the authority determines that the merger or acquisition is likely to generate anticompetitive effects, it may inform the notifying party of its concerns and grant it 30 business days for the submission of remedies.

19. The remedies proposed by the notifying parties in merger and acquisition proceedings are evaluated by COPROCOM's Board of Commissioners, which ultimately determines whether to: 1-) Approve the merger subject to the commitments offered by the notifying party, 2-) Approve the concentration subject to commitments that are different

from or additional to those proposed by the notifying party, as determined by the National Competition Authority, or 3-) Prohibit the merger or acquisition.

20. COPROCOM will assess the implementation of remedies in merger and acquisition cases based on the following criteria established under Costa Rican competition law:

1. The objective of imposing conditions is to preserve the existing level of competition in the relevant market under review.
2. The conditions must be directly related to the anticompetitive effects identified by the National Competition Authority.
3. Where multiple alternatives exist to preserve the current competitive conditions, the alternative that is least burdensome to the notifying parties shall be selected.
4. The remedies must be implemented timely, and the monitoring and verification of compliance must be feasible and effective.
5. The remedies imposed must be effective, considering their competitive impact, duration, and implementation risks.

21. In the case of the acquisition of CACSA by TRC, once COPROCOM communicated to the acquiring company the horizontal and vertical anticompetitive effects arising from the transaction, the latter proposed the implementation of a competition compliance program to resolve such concerns.

22. Nonetheless, COPROCOM considered the proposal to be insufficient because, although it included clear obligations and defined implementation timelines, it did not adequately address all the identified risks. Consequently, COPROCOM deemed it necessary to incorporate specific provisions aimed at limiting the exchange of commercially sensitive information among companies affiliated with TRC, as well as the implementation of independent external monitoring mechanisms, to oversee compliance with the commitments undertaken.

23. In summary, three main shortcomings were identified in the initial proposal by TRC: 1-) The absence of independent monitoring and auditing mechanisms, as well as measures ensuring the traceability of the compliance, 2-) The lack of specific functional or commercial separation measures designed to prevent potential anticompetitive conduct, 3-) An excessive reliance on good-faith commitments, without sufficient safeguards to ensure effective compliance.

24. Accordingly, COPROCOM required TRC to:

1. Directly link its competition compliance program to the anticompetitive effects associated with the notified acquisition, ensuring that each of the relevant risks identified is addressed through specific provisions within the program.
2. Adopt provisions expressly prohibiting the exchange of commercially sensitive information among companies affiliated with TRC, including information relating to prices, customers, production volumes, and sales volumes.
3. Appoint a compliance officer with functional independence within the corporate group of TRC and commit to engaging an independent external auditor to conduct annual assessments of the company's compliance with the program.

## 4. Modifying and Strengthening the Remedies

25. COPROCOM´s "*Guidelines for the Notification and Analysis of Economic Concentrations*" establish general principles that the authority must follow when determining remedies for mergers that may have anticompetitive effects. These principles are:

1. Proportionality: Remedies must be proportionate and specifically designed to address the harm caused by the merger and/or acquisition. The objective is to preserve competition without altering the pre-existing market structure.
2. Efficiency: The conditions imposed should be the least costly and least burdensome alternatives available to the economic agents involved.
3. Effectiveness: Remedies must be implemented timely, produce the intended competitive outcomes, and be capable of effective monitoring and verification.
4. Transparency and Consistency: There must be predictability in the implementation of remedies, and the remedies imposed must be directly linked to the anticompetitive effects arising from the notified transaction.

26. For the acquisition of CACSA by TRC, COPROCOM based its assessment and the establishment of remedies on the commitments proposed by the acquiring company during the second phase of the acquisition´s review process, following the National Competition Authority's identification of anticompetitive effects. In general terms, these commitments consisted of implementing an internal competition compliance program within TRC.

27. In this case, behavioral remedies were considered more appropriate in light of the nature and scope of the competition concerns identified. These concerns extended across different stages of the rice value chain, making it difficult to design and implement structural remedies capable of effectively addressing them. Against this backdrop, COPROCOM exercised its statutory authority to supplement the acquiring company's initial proposal with additional remedies aimed at addressing the identified competition concerns and preserving competition in the relevant markets.

28. The National Competition Authority recognized the relevance of the acquiring company's initial commitment proposal as a useful starting point; however, to meet the standards of proportionality and effectiveness established by Costa Rican competition law in the context of a transaction likely to adversely affect competition in the relevant markets, the proposal required greater depth through the incorporation of additional clauses aimed at strengthening its design, implementation, monitoring, and overall effectiveness.

29. Accordingly, COPROCOM introduced additional remedies to ensure that the proposed compliance program met the legal requirements for approving transactions that may have anticompetitive effects.

30. These remedies were organized into three broad categories, each comprising several specific commitments.

### 4.1. TRC Competition Compliance Program

- Submission of the competition compliance program proposed by the notifying parties, with the possibility of an extension subject to COPROCOM's judgement and objective assessment of its appropriateness.
- Direct linkage between the provisions of the compliance program and the risks to competition identified by COPROCOM (as communicated to TRC), with particular

emphasis on the risk of coordinated effects at the horizontal level. The program must not be generic; rather, it must respond specifically and proportionately to the risks that justified its adoption, thereby enhancing its effectiveness.

- The program must include specific elements that allow for the objective verification that the risks identified during the merger review are being effectively addressed.
- Formalization of the compliance program through a binding COPROCOM decision incorporating it as a condition for the approval of the notified acquisition.
- Inclusion of periodic review clauses to ensure that the compliance program can be adapted to changes in market conditions or to changes in the structure of the economic interest group affiliated with TRC.
- Publication by COPROCOM of TRC's compliance program, with the objective of ensuring transparency and enabling public scrutiny. This measure is intended to facilitate, in accordance with Costa Rican competition law, the ability of economic agents operating within the Costa Rican jurisdiction, to identify and potentially report any breaches of the compliance program.

## 4.2. Ethical Walls Between TRC's Subsidiaries and Affiliates

31. The compliance program must include a provision expressly prohibiting the exchange of commercially sensitive or strategic information among TRC's subsidiaries and affiliated companies. Such sensitive information must include (among other categories) pricing information, customer data, production volumes, and sales volumes. The purpose of this measure is to reduce the risk of anticompetitive coordination arising from the exchange of this kind of information.

32. COPROCOM considered this measure to be essential for preventing horizontal coordination risks, particularly in highly concentrated markets such as those analyzed in this case. The explicit prohibition on sharing strategic information is intended to reduce the likelihood of parallel conduct or tacit collusion and reinforces the parties' commitment to effective and transparent competition.

## 4.3. Independent Monitoring and Auditing of Remedies

- Appointment of a compliance officer with functional independence within the economic interest group affiliated with TRC.
- Commitment to engage an independent external auditor to conduct annual assessments of the competition compliance program proposed by TRC.
- Periodic submission of reports to COPROCOM, including measurable and verifiable indicators directly linked to the competition risks identified in the acquisition assessment process.

## 5. Institutional Resources Required for Monitoring Remedies

33. In accordance with Costa Rican competition law, economic agents subject to remedies imposed as conditions for merger approval are required to bear the costs associated with the implementation of such commitments; nevertheless, this consideration does not eliminate the need for COPROCOM to allocate institutional resources to monitor compliance with the remedies.

34. In the case of TRC's acquisition of CACSA, these responsibilities include the administration of the case file, the verification of the fulfillment of the remedies established by the National Competition Authority, and the preparation of reports for review by COPROCOM's Board of Commissioners, based on supervising activities carried out by the Competition Authority's Merger Control Unit.

35. Monitoring these remedies requires time and resources from COPROCOM, particularly where behavioral remedies are involved, and oversight must be maintained for several years. This represents a challenge for an authority with limited institutional resources, which must ensure adequate supervision of the imposed commitments while simultaneously carrying out its other statutory responsibilities.

## 6. Conclusion

36. TRC's acquisition of CACSA involved both horizontal and vertical relationships in markets characterized by high levels of concentration and significant barriers to entry. The competition risks identified led COPROCOM to approve the transaction subject to additional commitments that strengthened the acquiring company's initial proposal. Several lessons can be drawn from this case:

- **Addressing Competition Risks.** In the TRC-CACSA case, COPROCOM strengthened the proposed compliance program by introducing specific measures to address the identified competition risks, including input foreclosure, raising rivals' costs, customer foreclosure, and horizontal coordination. By linking these measures directly to the identified risks, COPROCOM sought to ensure that the commitments would effectively address its competition concerns. The publication of the compliance program on COPROCOM's website also contributed to transparency and allowed third parties to monitor compliance.
- **Behavioral Remedies.** In this case, the nature and scope of the identified competition risks, together with the difficulties associated with designing and implementing suitable divestiture measures, led COPROCOM to consider behavioral remedies more appropriate. These included a tailored competition compliance program, ethical walls, and independent external monitoring and auditing mechanisms.
- **Dismissal of Generic Remedies.** The experience derived from this case highlights the importance of tailoring remedies to the specific risks and anticompetitive effects arising from each individual merger and/or acquisition, rather than relying on standardized or homogenized, structural or behavioral remedies. COPROCOM considered it necessary to supplement the initially proposed compliance program by TRC, with obligations aimed at confining the exchange of commercially sensitive information among affiliated companies, as well as with independent external monitoring and auditing mechanisms designed to verify compliance.

- **Criteria for Designing Remedies.** The imposition of remedies by the National Competition Authority should be guided by the principles of proportionality, efficiency, effectiveness, and transparency, regardless of whether the remedies in question can be categorized as structural or behavioral. Remedies must be specific in nature and capable of addressing the anticompetitive effects identified in the merger and/or acquisition under analysis.
- **Monitoring the Implementation of Remedies**. A competition compliance program tailored to the identified risks, together with ethical walls restricting the exchange of commercially sensitive information, can help address competition concerns arising from a merger. Independent monitoring and auditing mechanisms are important to verify compliance and assess whether the remedies are achieving their intended objectives.

37. The acquisition of CACSA by TRC illustrates several challenges associated with overseeing behavioral remedies from the perspective of managing institutional resources. Although independent verification mechanisms contribute to the monitoring of remedies, the National Competition Authority must continue to execute compliance activities throughout the length of the commitments imposed. This requires the sustained allocation of technical and administrative resources following the approval of a merger and/or acquisition subject to remedies.