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Session III – Competition and Sports

- Contribution from Costa Rica -

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The attached document from Costa Rica is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 28-29 September 2023 to be held in Quito, Ecuador.

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Session III – Competition and Sports

- Contribution from Costa Rica -*

1. Sports organization and regulation

1. In 1998, Costa Rica enacted Act 7800, which governs sports in general and establishes the Instituto del Deporte y Recreación [ICODER, Sports and Recreation Institute, if translated]¹ as a semiautonomous institution of the State that has the objective of promoting, supporting, and fostering individual and team sports and recreation. As the governing entity, it has other functions, such as fostering the strengthening of private organizations related to sports and recreation under a legal, regulatory framework that allows their development.

2. Other functions of ICODER are: Promote and foster sports at a national and international level; develop a sports and recreation infrastructure plan; oversee that professional and competition sports include, compulsorily, short, mid, and long-term programs to promote little leagues or prospects; promote the inclusion of programs for disabled persons in the work plans of sports organizations in the country; execute a national training and specialization plan for trainers, sports journalists, referees, sports physicians, sports managers and officers.

3. Nevertheless, the entities responsible for overseeing, directing, organizing, and regulating competition sports (adapted and regular) are: the National Olympic Committee of Costa Rica, the National Paralympic Committee of Costa Rica, and the sports federations and associations representing the country nationally and internationally.

4. The National Olympic Committee and the National Paralympic Committee are non-profit, public interest organizations independent from each other that hold the exclusive rights to use words like Olympic, Olympian, Paralympic, Paralympian, and Paralympic Games, respectively, as well as the respective flags, icons, and official logos of the respective international entities.

5. For their part, federations and sports associations are subdivided into first-degree and second-degree associations. A first-degree sports or recreation association comprises at least ten persons of legal age and aims to promote the sports or recreation activity in general, or otherwise, one or more sports disciplines. A second-degree sports or recreation association has the exact nature and objective of a first-degree association but requires two or more first-degree associations to establish it and a legal capacity independent from the members that comprise it. This type of association is differentiated by including the words “federation,” “league,” or “union” in their names.

* Contribution from the Commission to Promote Competition (COPROCOM).

¹Under Act No. 7800, dated April 30, 1998, available in: http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=26290

6. All the associations and federations that wish to subject themselves to the valid regulations and the governance of the ICODER must be registered before the National Register after the ICODER has qualified whether such registration is appropriate. At the time of registration, the Institute and the Register shall certify that the associations and federations comply with the democratic principles to elect their board of directors, functioning, and organization. The Institute is authorized to invalidate any election that violates the stated principles and guarantees.

7. Under valid laws, sports associations are authorized to engage in activities that allow them to acquire financial means to fulfill their objectives. As a result, sports associations can be organized as companies or as *sociedad anónimas deportivas* [sports corporations, if translated].² Nevertheless, under such laws, any profits and benefits these associations derive from their business activities must benefit the sports association and may not be distributed or paid out to associates.

8. Nevertheless, sports associations or federations are granted certain benefits, such as the reduction of one-fourth of the rights, taxes, and revenue stamps that they have to pay at the time of incorporation or to amend their bylaws or to file any other registrations, as well as in the notarial fees payable. They are further released from the payment of the assets tax and are entitled to reduced income tax rates.

9. Now then, for an association or federation to be able to hold the national representation that the ICODER grants it, they must satisfy a set of requirements, including: A) be duly registered in the Register of Associations of the National Register, with legal books duly legalized, and its bylaws up to date; B) apply a regional organization model that guarantees the massification, promotion, and practice of sports at a national level; C) organize, schedule, and execute annual championships or tournaments in all divisions; d) produce a work plan that includes activities scheduled for the year for all concerned divisions, and the respective budget, including minor leagues programs, as well training programs; and e) preferably, internationally represent the sports activity. Sports federations that are national representatives of a sport are the only ones that can be named “costarricense” [Costa Rican], “de Costa Rica” [of Costa Rica], and “nacional” [national].

10. Becoming the national representative of a sport allows an association or federation to work alongside ICODER to promote, perfect, and grow the sport through tournaments and championships for the different categories and branches, as well as to prepare national representatives who will participate in international events and other activities that aim to improve the level of their sport.

11. The ICODER transfers resources to associations or federations with representation at a national level, as well as other duly registered sports or recreation associations.³ For 2023, despite budget cuts, the ICODER budgeted the transfer of 2.7M dollars to national associations or federations, and 209 thousand dollars to other associations that are not nationwide.

12. According to the website of the ICODER, over 40 national federations and entities are authorized in, among others, the following sports: football, basketball, handball, fencing, surf, golf, motorcycle racing, shooting sports, chess, cheerleading, cricket,

²before Act No. 7800 was enacted, these associations were governed under the Associations Act. However, this new Act enabled their organization or transformation into *sociedades anónimas deportivas*.

³With the exception of sports associations related to football (soccer).

weightlifting, gymnastics, hockey, judo, karate-do, arm wrestling, skateboarding, skating.⁴ Furthermore, over 60 local associations and 16 sports entities for disabled citizens are also registered.

13. Finally, it must be stated that Act 7800 also creates the Sports Conflicts Administrative Tribunal to which players, trainers, athletes, and sports directors can resort to settle any pecuniary claims they might have, notwithstanding the legal nature of their contractual relationship, provided these arise from sports or sports-labor related obligations with an association, federation, or sports corporation recognized as such by the ICODER and are related to the practice of a sport or recreation activity.

2. Organization of sports leagues

14. As mentioned above, sports associations or federations with national representation organize national tournaments and championships for the different branches and categories of the sport.

15. Nevertheless, no legal impediment exists for other existing organizations, whether governed or not by the ICODER, to organize local or national organizations of the same sport. However, a lack of national representation can limit the participation of clubs or athletes in subsequent international events. Likewise, tournaments or championships depend on the type of sport, the characteristics of the athletes, and the degree of organization in the country.

16. For example, in the case of men's football, the most popular sport in the country, the *Federación Costarricense de Fútbol* [Costa Rican Football Federation, if translated] is made up of the following leagues: UNAFUT (Professional First Division League), LIASCE (Professional Second Division League), LINAFA (Amateur Football League (Third Division)), LINFUTSAL (Futsal League), LIFUPLA (Beach Football League), and UNIFFUT (National Women's Football Union). Each of them organizes their championships.

3. Competition and sports

17. The regulations that govern competition in Costa Rica⁵ does not establish any exemptions for companies or associations of the sports sector. Hence, the COPROCOM can investigate anti-competitive behaviors and sanction them accordingly, as well as analyze the economic concentrations of any companies that meet the requirements that such regulations establish.

18. In the case of the investigation of anti-competitive behaviors, the only limitation that would eventually apply is related to the condition of being an economic agent established by applicable laws to incur in any sanctionable practice. This condition establishes the obligation that an entity participates, in any form, in any economic activity,

⁴ Available at: <https://icoder.go.cr/directorio-entidades-deportivas>

⁵ Promotion of Competition and Effective Defense of the Consumer Act, No. 7472; and Strengthening of the Competition Authorities of Costa Rica Act, No. 9736.

either as a buyer, seller, supplier, or consumer of goods or services, either directly or on behalf of others⁶, a characteristic that some entities might not eventually fulfill.

19. Nevertheless, the legal nature of sports associations or otherwise of federations is not *a priori* a limitation for the application of competition regulations. The definition of an economic agent includes all incorporated or unincorporated legal entities, and, therefore, their organizational form is irrelevant.

20. On the other hand, it is not clear whether Costa Rican competition laws can fully apply to the sports labor market, specifically to “no-poach” agreements, which refer to agreements between competitors that state that employees from other teams cannot be solicited, which restricts competition in the labor market. This is because the regulations specifically list the types of agreements that can be construed as absolute monopolistic practices. Hence, if any behavior can eventually be linked to such types of agreements, it can be sanctioned. However, the wording of such articles cannot be easily linked to the labor market, although this will ultimately depend on the specifics of each case.⁷

4. Sports broadcasting

21. The most significant experience of COPROCOM concerning the sports sector has been in relation to rights to broadcast sporting events. Although some instances related to kart racing (2008) and taekwondo (2017) are known, both concerning requirements that seemed to limit competition on the types of equipment and uniforms to use in the sport, respectively, these were archived as the behavior was not considered anti-competitive. A claim about the exclusive right to sell tickets to the Football World Cup Brazil 2014 matches was also archived.

22. Regarding sports broadcasting, the first case submitted to the COPROCOM was related to the exclusive rights awarded for the radio broadcasting of sporting events of the Football World Cup Japan-Korea 2002. This case was also archived, as no sanctionable behaviors were identified. More recently, in 2020, the COPROCOM also analyzed two

⁶Article 2 of Act No. 7472 defines an economic agent as follows: “*Regarding the market, any individual or legal entity, either unincorporated or incorporated, public or private, participating in any form of economic activity, as a buyer, seller, supplier, or consumer of goods and/or services, on their name or on behalf of others, irrespective of whether they are imported or domestic, or that have been produced or loaned by the economic agent or a third party.*”

⁷ “*Article 11 - Absolute monopolistic practices. Absolute monopolistic practices are the contracts, agreements, arrangements, actions, or combinations among current or potential competing economic agents with any of the following purposes:*

a) Setting, raising, arranging, or manipulating the purchase or sale price at which goods or services are offered or demanded in the market.

b) Establishing the obligation to acquire, produce, process, distribute, or market only a restricted or limited number of goods or the provision of a restricted or limited number, volume, or frequency of services.

c) Dividing, distributing, assigning, or imposing portions or segments of a market, current or future, on the basis of certain customers, suppliers, times, geographical areas, or spaces.

d) Establishing, arranging, or coordinating tenders or any abstention in tenders, competitive biddings, auctions, or public auctions.

e) Refusing to buy or sell goods or services.

f) Exchanging information for any purpose or with the effects referred to in any preceding points.”

cases related to the matches in the men's first division of football. These cases were submitted due to changes in relation to how these matches were broadcasted.

23. In Costa Rica, the rights to broadcast the matches of the first division of football (FPD) belong exclusively to the football teams and can be negotiated individually. Hence, the clubs enter into temporary exclusive broadcasting rights agreements that award a license to rebroadcast their games. These agreements can be terminated when better offers are received or otherwise due to circumstances beyond the parties' control, such as the team no longer being part of the first division. A characteristic of the Costa Rican model is that the individual sale is "pure," which means that the rights granted are for when the team that owns such rights is playing at home.

24. Until the 2018-2019 season, open (free) television broadcasters held broadcasting rights for nearly all FPD matches. However, in line with what had been happening globally, a vital cable television company entered the football events broadcasting rights market and acquired the rights of 6 of the 12 FPD teams and some Second Division teams for the 2018-2019 season.

25. This meant that television networks were no longer able to broadcast all of the games of the championship, while the cable TV company broadcasted all of them by including the channels of the open (free) television broadcasters in their programming, which held the rights of the largest teams, in addition to holding the exclusive broadcasting rights of all other matches.

26. Hence, the first case was born: the rise of a content television company specializing in sports (FUTV) that acquired a sublicense for the broadcasting rights of the two largest television broadcasters and offered such content to cable TV companies in the country. The investigation analyzed whether the company's organization was a concentration that required notification before the competition authorities, as it belonged to one of the licensees of the transmission rights. The case concluded that this was not an economic concentration under the then valid regulations, as this sublicensing was made by third parties and not by the owners of the broadcasting rights, and given the temporary nature of the agreement, which did not exceed five years.⁸

27. The second case is a claim by a cable TV company that acquired the broadcasting rights of six teams, all with relatively small fan bases, and FUTV's alleged refusal to provide the television content unless, in exchange, it sublicensed to it all of the broadcasting rights of the matches -without audio- of the teams for which the cable TV company held rights. The investigation carried out, in this case, found that FUTV had substantial power in the relevant market, whereas it held the broadcasting rights of the matches of the four teams with the largest fan base and that had won nearly all championships, and whereas it would be engaging in a relative monopolistic practice to discourage any company that aimed to participate in the broadcasting rights market.⁹ Even though the case was transferred to the Instruction Unit, it was finally archived, and no sanctions were imposed, as the Highest Governing Body considered the existence of an actual lack of interest, given that the companies entered into an agreement after the cable company caved and opted to sell their content to FUTV and, the latter, in turn, sold its content to the cable company.¹⁰

⁸Resolution RES-INV-019-2021 dated August 18, 2021.

⁹Resolution RES-INV-013-2022 dated April 21, 2022.

¹⁰ Given the Highest Governing Body's dissenting vote, it was not a unanimous resolution.

28. The foregoing investigations evidence the need to analyze the appropriateness of establishing specific regulations concerning how broadcasting rights are awarded when there is no open and transparent bidding and concerning the time frames during which these are awarded. The investigations further evidenced that at least one of the television broadcasters, specifically the one that established FUTV, is a shareholder and holds at least one seat on the board of directors of the FPD team that is most popular in the country, which poses the question if the time frames of the rebroadcasting license granted effectively have a termination date. Accordingly, the COPROCOM must monitor the behavior of this specific market.

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