

Unclassified

English - Or. English

21 September 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Latin American and Caribbean Competition Forum

LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I:

- Contribution from Costa Rica -

14-15 October 2026

This Note his attached document from Costa Rica is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session I at its forthcoming meeting to be held on 14-15 October 2026 in Buenos Aires, Argentina.

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JT03592813

Session I: Competition Law Enforcement in Informal Markets

- Contribution from Costa Rica -

Comisión para Promover la Competencia (COPROCOM)*

1. Introduction and National Context

1. Costa Rica thanks the OECD Secretariat and the IDB for the opportunity to contribute to this session. This contribution expressly adopts the definition of the informal economy proposed by the International Labour Organization (ILO) and used in the session's¹ background paper: all economic activities carried out by workers and economic units that, in law or in practice, are not covered, or are insufficiently covered, by the formal framework, whether because they operate outside the reach of the law, because the law is not applied or enforced, or because the law itself discourages compliance by being inappropriate, burdensome, or excessively costly. From this three-part definition emerges an idea that guides the entire national analysis: *informality is not the same as illegality*. It is precisely the third scenario, namely where regulation effectively excludes operators because it is overly burdensome, that links competition policy with the review of regulatory barriers to entry.

2. Informality is a structural feature of the Costa Rican economy. According to the Continuous Employment Survey (ECE) of the National Institute of Statistics and Census (INEC)², in the first quarter of 2026 informal employment accounted for 38.2% of the employed population (824,083 persons), compared with 37.3% in the same quarter of 2025, representing a year-on-year comparison of the same period rather than a comparison with a different quarter of the previous year. The increase in the indicator was not due to a rise in the absolute number of persons in informality, which remained virtually unchanged at approximately 824,000, but rather to a contraction in total employment during the same period. The incidence is concentrated among self-employed workers: informality among self-employed workers stands at 85.4%, compared with 22.2% among salaried workers (Q1 2026). The increase in the indicator coincided, however, with an acceleration in GDP growth, from 4.4% in 2024 to a projected 5.2% in 2025³, illustrating a dual economy in which economic growth does not automatically translate into formal employment.

* Written submission from Costa Rica, Commission for the Promotion of Competition (COPROCOM), Response to the call for contributions DAF/COMP/LACCF(2026)1.

¹ OECD/IDB, DAF/COMP/LACCF(2026)1, Background Paper for Session I of the 2026 Latin American and Caribbean Competition Forum (FLACC), "Competition Law Enforcement in Informal Markets".

² National Institute of Statistics and Census (INEC), Continuous Employment Survey (ECE), first quarter of 2025 and first quarter of 2026 (year-on-year comparison of the same quarter); El Financiero, "Economic Growth Without Greater Formal Employment: The Duality Undermining Costa Rica's Labour Market", based on data from the ECE-INEC.

³ Central Bank of Costa Rica (BCCR), Gross Domestic Product by Economic Activity, annual rate of change of GDP at market prices: 4.4% in 2024 (preliminary figure) and 5.2% in 2025 (forecast)

3. Informality also displays marked sectoral heterogeneity. Based on ECE-INEC data for the third quarter of 2023 analysed by the College of Economic Sciences of Costa Rica⁴, the highest rates of informal employment are found in households as employers (81%), other service activities (80%), construction (66%), transport and storage (57%), accommodation and food services (around 52%), and agriculture and fishing activities (51%). These sectors - distribution, transport, food services and agriculture - are precisely those in which informal operators provide inputs, distribution channels and retail services, and where their interaction with formal firms shapes market outcomes.

4. A methodological clarification underpins Costa Rica's position and runs throughout this contribution: the figures above measure *employment relationships*, not market participation or competitive capacity. Labour informality, business informality and informal competitive pressure are three distinct concepts that should not be mechanically equated. A high level of informal employment in a sector does not, in itself, demonstrate that informal supply disciplines formal prices; conversely, a small informal segment in employment terms may exert significant competitive pressure in specific niches. This distinction explains both Costa Rica's decisional practice and the gaps identified in this contribution.

2. How Informality is Identified and Measured

5. Neither Law No. 7472 (Law on the Promotion of Competition and Effective Consumer Protection) nor Law No. 9736 (Law Strengthening the Competition Authorities) contains a legal definition of an "informal market" or an "informal operator". For the Costa Rican legal framework, informality is an economic phenomenon rather than a legal competition-law category. This does not create a coverage gap: as discussed in Section 4, the law applies to every "economic agent" under a functional criterion, irrespective of its degree of formalisation.

6. The official measurement available is labour-related in nature (ECE-INEC and the Ministry of Labour and Social Security Labour Market Observatory). There is no official metric measuring the market share of informal supply by sector: labour figures cannot be directly translated into market share, and this constitutes the main data challenge faced by the authority. In decisional practice, the existence and scope of informal activity have been identified on a case-by-case basis through information submitted by the parties, statements from chambers of commerce and trade associations, and qualitative observations of the competitive environment, without any systematic methodology for quantification.

7. Regarding sources of information and co-operation, Law No. 9736 provides three avenues: investigative powers to request information during inquiries and proceedings; market studies carried out under the authority's promotion and advocacy functions (Articles 20 to 23); and a specific mechanism for access to tax data for the calculation of fines, whereby Article 119 authorises the authority to request certification from the Tax Administration regarding declared gross income or gross revenue where the economic agent fails to provide financial statements. At the domestic inter-institutional level, COPROCOM maintains a co-operation agreement with the telecommunications sector regulator (SUTEL), providing for meetings, a joint case-handling protocol, and information

contained in the July 2025 Monetary Policy Report, approved by the BCCR Board of Directors under Article 3 of the minutes of Session No. 6270-2025, dated 28 July 2025).

⁴ College of Economic Sciences of Costa Rica, analysis of informality by branch of economic activity, based on ECE-INEC data, third quarter of 2023.

exchange, with explicit reference to confidentiality rules governing information classified as confidential, restricted or sensitive. However, there is no permanent data-sharing regime with INEC, the Ministry of Finance, the Costa Rican Social Security Fund, or municipalities, despite these bodies holding most administrative records relating to low-formality economic activity. COPROCOM's market studies (rice, sugar, medicines, professional services, postal services) have drawn upon data from third-party institutions, but there is no documented and permanent channel specifically relating to informal operators.

8. The OECD conceptual framework offers two tools that Costa Rica considers directly applicable for addressing this measurement gap. First, the concept of the *competitive fringe*: where formal and informal firms serve overlapping customer bases, informal agents collectively operate as a competitive constraint, meaning that an authority observing only the formal segment may overestimate market power. As a result, competition authorities should make reasonable efforts to measure the informal segment. Second, the *supply chain survey* methodology, which estimates the activity of firms lacking direct registration by asking formal suppliers and distributors about their informal counterparts. Both concepts⁵ provide the theoretical foundation for the Costa Rican practice of aggregate estimation described in Section 4.

3. Informality in Competition Analysis

3.1. Informal Supply as a Competitive Constraint: Mergers

9. Costa Rica has precedents in which informal supply was expressly incorporated into competitive analysis. The most significant is COPROCOM Decision 013-2024⁶, the final second-phase decision of 18 March 2024 concerning the BB Global Investing Holding/Bimbo-La Zarcereña merger, classified as a conglomerate merger through product extension. In assessing substantial market power in the artisanal bakery and pastry sector, the Commission recognised the presence of informal firms as an additional source of competitive pressure, noting that “*there is the presence of several informal firms that do not require much technology to package their products and sell them to retailers, such as small grocery stores or other establishments*”⁷, and considered them alongside formally identified competitors and the sector's low barriers to entry (more than 1,300 bakeries in the country).

10. Similarly, COPROCOM Decision 004-2023⁸ (the CE Rent a Car vehicle rental merger) included “*informal agents*” (operators not affiliated with the sectoral chamber and not registered with the Costa Rican Tourism Institute) as part of a broad supply base that contributed to ruling out both unilateral and co-ordinated effects.

11. Both precedents demonstrate that informal supply can be incorporated into competition analysis. They also reveal its limitation: in neither case were the market share, capacity, permanence, or disciplining effect of that segment on prices estimated, nor was

⁵ OCDE (2018), *The Informal Economy in Latin America and the Caribbean: Implications for Competition Policy*, Global Forum on Competition, Roundtable N.º 221.

⁶ COPROCOM, Decision No. 013-2024, Case No. 065-2023-CE (BB Global Investing Holding/Bimbo-La Zarcereña).

⁷ Ibid, p. 11.

⁸ COPROCOM, Decision 004-2023 (CE Rent a Car).

any methodology set out for measuring it. The incorporation was qualitative. Hence the central proposition that Costa Rica submits for discussion: informal supply is neither irrelevant nor automatically an effective substitute; its competitive significance must be demonstrated on a functional basis, through substitutability, scale, permanence, and capacity for expansion, rather than presumed merely because it exists.

3.2. Relevant Market Definition

12. Relevant market definition follows the substitutability standard established in Article 14 of Law No. 7472. The SSNIP test is admissible but not codified, and its application to the informal segment is constrained by the lack of data on prices and quality. Nothing prevents informal supply from being included in the relevant market where substitutability is demonstrated, as occurred qualitatively in the precedents cited above, but no rule requires or methodologically structures such inclusion. The economic literature cited by the OECD provides a useful criterion which Costa Rica proposes adopting as a decision-making standard: the formal and informal segments compete effectively, and their inclusion within the same market should be assessed, where there is a combination of small and medium-sized enterprises, relatively low productivity, restricted access to credit, and high fixed costs. Conversely, informal supply should be excluded, with appropriate justification, where differences in quality, safety, guarantees, availability, consumer confidence, or avoided regulatory costs eliminate substitutability from the demand-side perspective.

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3.3. Assessment of Market Power and Formal-Informal Interaction

13. Substantial market power is assessed in accordance with Articles 14 and 15 of Law No. 7472 (market shares, barriers to entry and expansion, and countervailing buyer power). National experience shows that formal-informal interaction enters the case file under varying evidential status: in the mergers cited above it was an observation made by the authority itself; in other matters it has merely been a claim advanced by a party. Thus, in the cartel case involving public car parks surrounding the Centro Colón building in San José⁹, the representative of one of the investigated parking facilities stated during the hearing that the meeting among competitors had included discussion of informal on-street parking, particularly on Calle 40, and the presence of informal parking attendants as a common problem affecting the area. The Commission did not treat that alleged informal competitive pressure as an element of the conduct analysis or the sanction. It remained a party allegation rather than an economic finding by the authority. To date, there has been no public analysis quantifying the disciplining effect of informal supply on formal prices.

14. In order to bring structure to this heterogeneity, Costa Rica proposes an analytical framework identifying five possible functions of informality within a market, which should be distinguished on a case-by-case basis: (i) disciplining prices as a competitive fringe; (ii) operating as a route of entry or a means of subsistence; (iii) distorting competition through the avoidance of regulatory costs (a risk to competitive neutrality); (iv) being the victim of exclusionary conduct by formal firms; and (v) facilitating concealed co-ordination by

⁹ COPROCOM, decision adopted under Item Six of Ordinary Session No. 24-2009, dated 4 August 2009, Case No. D-05-06.

reducing traceability. The methodological error to be avoided is equating informality with effective competitive pressure without functional verification.

https://oecd-my.sharepoint.com/personal/nelson_vanderfelt_oecd_org/_layouts/15/Doc.aspx?sourcedoc=%7B5F834C4C-EEF5-4A32-87BD-7FB9D6679412%7D&file=Contribucion_COPROCOM_CostaRica_SesionI_FLACC_2026%20Translation%20EN.docx&action=default&mobileredirect=true

3.4. Remedies

15. Law No. 9736 permits corrective measures and commitments. In sectors characterised by high levels of informality, the principal challenge is verifiability: monitoring remedies imposed upon agents lacking formal records or accounting systems is both costly and fragile. COPROCOM has no record of cases in which remedies have been imposed in highly informal sectors. Consequently, for Costa Rica this issue remains largely prospective and relates to institutional design. Costa Rican doctrine concerning remedies emphasises the requirements of verifiability and proportionality. From this follows Costa Rica's position: preference should be given to remedies that are verifiable and entail low monitoring costs, supported by objective indicators and sectoral co-operation for supervision, rather than behavioural obligations that are difficult to enforce against agents whose activities have limited traceability.

4. Competition Law Enforcement in Informal Markets

4.1. Applicability of the Law and the Functional Concept of Economic Agent

16. Costa Rica applies competition law in markets that contain informal components. Law No. 9736 applies to every economic agent under a functional concept encompassing natural persons, legal persons and de facto entities participating in economic activity, regardless of their registration status, tax status or trade association membership. There is no exemption for informality: the absence of registration neither grants immunity from the law nor deprives the agent of its procedural guarantees. The case concerning pig producers¹⁰, in which both agents affiliated and not affiliated with the sectoral chamber were investigated and sanctioned alike, illustrates the operation of this functional concept irrespective of an agent's trade association membership.

4.2. Procedural Challenges: Identification, Notification and Defence

17. The special procedure established by Law No. 9736 requires identification of the investigated party, valid notification and an oral and private hearing. In relation to agents lacking a registered address, legal personality or formal representation, these requirements translate into practical challenges concerning identification and service of process. Costa Rica's response has been to apply the general rules with evidential flexibility regarding identification (trade association statements, factual observations and findings), although no written protocol exists for notification and identification specifically adapted to unregistered agents. Costa Rica considers it useful to develop protocols allowing the use of actual addresses and digital means of service, combined with enhanced due process

¹⁰ COPROCOM, decision adopted under Item Five of Ordinary Session No. 36-02, dated 26 November 2002, Case No. IO-06-01.

safeguards, precisely because the informality of the notified party requires more, rather than less, protection of the right to an effective defence.

4.3. The Central Challenge: Sanctions and Evidence in the Absence of Records - A National Evidential Gradient

18. The most specific contribution arising from the Costa Rican experience concerns the calculation and graduation of fines. Article 119(e) of Law No. 9736 bases fines for very serious infringements on up to 10% of the economic agent's total turnover in the preceding fiscal year and provides the supplementary mechanism already described: where financial statements are unavailable, certification of gross income or gross revenue from the Tax Administration. Article 120 establishes eight criteria for determining the amount of the fine, further developed by Article 183 of the Regulation¹¹, including the fourth criterion, the infringer's market participation, and the eighth criterion, ability to pay, both of which depend upon quantitative information relating to the agent. Fines imposed on natural persons (Article 119(g): from one to 680 base salaries) apply only where direct participation by the individual has been proven and do not constitute a substitute basis for fining the economic agent itself. However, no provision establishes an express fallback regime for the extreme scenario in which the agent possesses neither accounting records nor reliable tax declarations.

19. Two national sanctioning precedents, located at opposite ends of the spectrum of market formality, establish an evidential gradient demonstrating how informality operates in practice as a problem of proving market share, with direct implications for the fourth criterion of Article 120 (or, at the time, the equivalent criterion under Article 26 of Law No. 7472):

- **(a) Formality Pole - Rice Case¹².** The Commission sanctioned nine rice agro-industrial companies for an agreement not to purchase domestically produced paddy rice, originating from two meetings of agro-industrial firms (5 and 12 August 2019) and consolidated in Ordinary Session No. 885-12-2019 of the Board of Directors of the National Rice Corporation (CONARROZ) (Resolution 3.2.1). The formal nature of the sector, consisting of agro-industrial firms registered with CONARROZ and operating in a regulated market, enabled the Commission to identify fully the participation of each undertaking using official foreign trade data (import tariff quotas for 2019-2022). Consequently, the market participation criterion was applied and quantified on an agent-by-agent basis. The case also provides a useful methodological insight regarding the transition between legal regimes: the infringement was characterised under Law No. 7472, but the sanction was graduated under Law No. 9736.

¹¹ Executive Decree No. 43305-MEIC, Regulations implementing Law No. 9736.

¹² COPROCOM, Decision No. 022-2022, dated 26 July 2022 (rice agro-industry).

- **(b) Informality Pole - Real Estate Brokers Case¹³.** Twenty-eight real estate brokers, members of the Costa Rican Chamber of Real Estate Brokers (CCCBR), were sanctioned for agreeing, through Articles 19, 20, 21 and 27 of the Chamber's Code of Ethics, commission percentages applicable to the sale, rental and management of properties in the absence of an express agreement with the client, a hard-core anticompetitive practice under Article 11(a) of Law No. 7472. In determining the sanction under the then applicable Article 26 of that law, the Commission expressly found that *"because of the informality of the market, it was not possible to estimate the individual participation of each investigated agent"* and therefore assessed the participation criterion on a collective basis. According to the President of the CCCBR herself, the Chamber included between 200 and 300 brokers compared with a total universe she estimated at more than 3,000 practising brokers. Consequently, the combined participation of the investigated agents was considered *"relatively low"*, despite the Chamber's prestige and institutional history. Among all the precedents examined in this contribution, this is the only one in which the authority itself expressly described the market as informal in the text of the decision.

20. A third precedent, contemporaneous with the Real Estate Brokers¹⁴ case, provides a relevant methodological antecedent, although of a different nature and not strictly related to informality. In that case, the Costa Rican Chamber of Pig Producers and a group of producers, some members and some non-members, co-ordinated the freezing of pork in order to restrict supply and sustain prices under Article 11(b) of Law No. 7472. The inability to identify fully the participation of each agent did not arise from market informality, which the case file does not describe in those terms, but rather from the fact that not all Chamber members participated in the conduct while certain non-member producers did participate. This was therefore a problem of attribution of responsibility within a formally structured market. Nevertheless, the Commission relied on the same tool that it had employed two months earlier in the Real Estate Brokers case: an aggregate estimate (the affiliated firms collectively represented approximately 50% of the pig production market), supplemented by individual fallback evidence, namely *"financial statements where available and declarations of sales, income or other information submitted by the accused agents"*. The importance of this precedent for the present contribution is not that it illustrates informality, but that it confirms aggregate estimation combined with supplementary evidence has, since 2002, constituted an established component of the market participation criterion, now reflected in Article 120 of Law No. 9736, regardless of the specific reason why individualised assessment proves impossible.

21. The combined lesson is twofold. First, in the two genuine poles of market formality, the formal Rice case and the informal Real Estate Brokers case, both expressly characterised as such by the authority, the greater the degree of informality, the lower the capacity to individualise the sanction. The authority moves from agent-by-agent quantification based on official data to a global assessment without individualisation once it determines that the market is informal. The Pig Producers case, decided contemporaneously with the Real Estate Brokers case, further confirms that the same aggregate estimation supplemented by indirect evidence may also be used for attribution problems within formal markets characterised by partial membership, demonstrating the

¹³ COPROCOM, decision adopted under Item Five, Point E, of Ordinary Session No. 26-2002, dated 10 September 2002, Case No. 028-00.

¹⁴ COPROCOM, decision adopted under Item Five of Ordinary Session No. 36-02, dated 26 November 2002, Case No. IO-06-01 (Pig Producers Case).

longevity and institutional robustness of the tool. Second, this practice has developed reactively and on a case-by-case basis over a period of twenty years and across two successive legal regimes. No systematic doctrine or written institutional criterion currently exists regarding how market participation and ability to pay should be reconstructed where neither accounting records nor reliable tax declarations are available. The precedents resolve the graduation of fines, but they do not address the earlier stage of detection and competitive assessment in unregistered markets. More precisely, the gap is not absolute, but rather a gap within the sanctioning sphere. In the advocacy sphere, COPROCOM's Market Studies Guide¹⁵ already includes tools applicable to informal markets, such as analysing the difficulty of entering and competing within a sector and the reasons for such difficulty; distinguishing between barriers already present in the market and barriers deliberately created by incumbent firms; examining whether existing regulation unnecessarily restricts competition; and promoting a level playing field among competitors, even though these tools have not yet been applied systematically for that purpose.

22. Regarding the distinction drawn in the questionnaire between infringements by object and infringements by effect, the Costa Rican experience confirms its relevance. In hard-core anticompetitive practices, market definition is less critical to establishing the infringement itself, but informality re-emerges with full force in determining the sanction, particularly under the fourth and eighth criteria of Article 120. By contrast, in effect-based infringements and merger control, the size and structure of the informal segment influence the analysis from the very stage of market definition, as demonstrated by the precedents discussed in Section 3.

4.4. The dual role of the informal agent: also a victim

23. Costa Rica agrees with the Secretariat that an informal undertaking may play a dual role: it may be both the author of anticompetitive conduct and, at the same time, the victim of exclusionary practices by formal undertakings. The Rice case provides the paradigmatic national example of the latter situation. The direct victims of the purchasing boycott were domestic paddy rice producers, constituting the least formalised link in the production chain, who were boycotted by the formal, registered agro-industrial sector. Vigorous competition law enforcement therefore operated as a mechanism for protecting less formalised agents against the coordinated purchasing power of the formal segment. This interpretation introduces a necessary symmetry into the analysis: competition policy in informal markets is not merely a question of how to sanction informal operators, but also of how to protect them.

4.5. Interaction with Other Infringements and the Risk of an Exclusion Effect

24. COPROCOM is Costa Rica's national competition authority, without prejudice to the sector-specific powers exercised by SUTEL in telecommunications. It does not possess powers to sanction tax, labour or health infringements. Nevertheless, the interaction between competition infringements and those other forms of infringement raises an important institutional design risk that Costa Rica wishes to highlight in the regional debate. If intervention by the competition authority exposes an informal agent to fiscal or labour consequences through the subsequent use of information obtained during a competition investigation, co-operation, whistleblowing and the effective operation of the leniency programme are discouraged in relation to that segment. In such circumstances, enforcement may ultimately drive activity into even deeper forms of informality, the "expulsion effect"

¹⁵ COPROCOM, Market Studies Guide, Supplement No. 215 to Official Gazette No. 2

identified by the OECD. The appropriate response is not immunity, but rather inter-institutional coordination incorporating explicit safeguards governing the use of information gathered in competition proceedings.

25. The converse of this caution is the principle of competitive neutrality. Recognising indirect evidence and aggregate estimations in order to avoid impunity for informal agents should not evolve into special advantages for small informal businesses, such as exemptions or differential treatment based on size, that distort competition vis-à-vis formal operators who bear the costs of compliance. Sanctioning policy must be calibrated between these two extremes: neither impunity because of a lack of data nor regulatory shelter within informality.

4.6. Domestic and International Co-operation

26. At the domestic level, in addition to the tax-information mechanism under Article 119 and the judicial assistance mechanisms provided for in Law No. 9736 to obtain information where investigated parties conceal records, COPROCOM benefits from the co-operation agreement with SUTEL described in Section 2. That agreement provides for *"the holding of meetings, communication and the exchange of information in those cases that must be resolved by both Parties"*, for which purpose *"the Parties shall sign a protocol governing case handling"*¹⁶, and subjects confidential, restricted or sensitive information to the provisions of Article V of the agreement. Costa Rica considers that an effective policy for measuring informality requires extending this same contractual model, consisting of a joint case-handling protocol together with a confidentiality clause, to institutions that currently lack such arrangements, namely INEC, the Ministry of Finance, the Costa Rican Social Security Fund (CCSS), customs authorities and municipalities.

27. At the international level, over recent years COPROCOM has developed its own network of bilateral technical co-operation agreements with counterpart competition authorities across the region that remained in force at the time of this contribution: the Administrative Council for Economic Defence of Brazil (CADE, 11 October 2018); the Superintendency of Industry and Commerce of Colombia (SIC, 20 October 2021); the National Competition Commission of Paraguay (CONACOM, 8 April 2021); the Federal Economic Competition Commission of Mexico (COFECE), through an agreement signed jointly with SUTEL (3 September 2020); the National Commission for the Defence of Competition of Argentina (CNDC, Memorandum of Understanding, 13 October 2025); the Superintendency of Competition of Guatemala (technical co-operation agreement, 4 December 2025); the National Commission for the Defence of Competition (PROCOMPETENCIA) of the Dominican Republic (technical co-operation agreement, 29 October 2025); and the Superintendency of Economic Competition of Ecuador (Memorandum of Understanding, 4 December 2025). This network constitutes not so much an external comparative model as COPROCOM's own contractual infrastructure.¹⁷

¹⁶ COPROCOM, co-operation agreement with the Superintendency of Telecommunications (SUTEL), Articles IV and V.

¹⁷ Administrative Council for Economic Defence (CADE), Brazil, 11 October 2018; Superintendency of Industry and Commerce (SIC), Colombia, 20 October 2021; National Competition Commission (CONACOM), Paraguay, 8 April 2021; Federal Economic Competition Commission (COFECE), Mexico (with SUTEL), 3 September 2020; National Commission for the Defence of Competition (CNDC), Argentina, Memorandum of Understanding, 13 October 2025; Superintendency of Competition, Guatemala, Technical Co-operation Agreement, 4 December

28. The confidentiality clauses contained in these instruments share a common architecture: compatibility with each Party's domestic law and prior consent for any subsequent disclosure of shared information. The memorandum with Argentina's CNDC provides that: *"Whenever information is exchanged, the recipient shall, to the extent compatible with its legislation: (a) maintain the confidentiality of the shared information; (b) comply with any conditions imposed by the Signatory providing the information; and (c) obtain the written consent of the Signatory providing the information for any disclosure thereof."*¹⁸ The agreement with Brazil's CADE refers confidentiality matters to the domestic legal system of each Party: *"The exchange of information shall comply with the provisions governing the confidentiality of data contained in the applicable national legislation of each of the Parties."*¹⁹ The agreement with Colombia's SIC incorporates an express confidentiality clause: *"The Parties undertake, in a manner compatible with their relevant national legislation, to maintain complete confidentiality concerning any information provided in connection with activities undertaken pursuant to this Agreement which is confidential in nature."* It further specifies that: *"Nothing in this Agreement shall oblige the Parties to provide confidential, restricted or sensitive information as determined by the competent authorities within their respective jurisdictions."*²⁰ The remaining agreements in the network (Paraguay, Mexico, Guatemala, the Dominican Republic and Ecuador) follow the same structure of compatibility with domestic legislation and prior consent for subsequent disclosure.

29. For Costa Rica, this architecture, already tested through COPROCOM's international co-operation instruments and through its domestic agreement with SUTEL, constitutes the natural template for extending institutional co-operation towards the measurement of informality. It does not require the creation of a new legal instrument. Rather, it requires replicating domestically, with INEC, the Ministry of Finance, the CCSS, customs authorities and municipalities, the same model of joint case-handling protocol and confidentiality clause compatible with national legislation that COPROCOM already employs with its international counterparts.

5. Useful Tools and Reforms: Costa Rica's Proposals

30. Based on the experience described above, Costa Rica submits to the Forum a package of tools, expressly distinguishing between existing capacities and design proposals that have not yet been implemented.

31. **Interpretative Guidance on the Evidential Standard in Informal Markets (Priority Regulatory Proposal).** A guidance document that: (i) recognises indirect evidence and aggregate estimations as an admissible basis for applying the market participation criterion where registration records are lacking, codifying the evidential gradient already applied in practice (full individualisation → aggregate estimation with

2025; National Commission for the Defence of Competition (PROCOMPETENCIA), Dominican Republic, Technical Co-operation Agreement, 29 October 2025; Superintendency of Economic Competition, Ecuador, Memorandum of Understanding, 4 December 2025.

¹⁸ COPROCOM-CNDC (Argentina), Memorandum of Understanding, 13 October 2025, Confidentiality Clause.

¹⁹ COPROCOM-CADE (Brazil), Technical Co-operation Agreement, dated 11 October 2018, confidentiality clause.

²⁰ COPROCOM-SIC (Colombia), Technical Co-operation Agreement, 20 October 2021, Confidentiality Clause.

supplementary evidence → global assessment); (ii) articulates the use of information from third-party institutions together with safeguards against the exclusion effect; and (iii) clarifies the determination of ability to pay in the absence of financial statements, including a standard for reconstructing income through indirect evidence in the extreme scenario where both accounting records and reliable tax declarations are absent, while preserving proportionality and reasoned decision-making. It remains to be assessed whether guidance alone is sufficient or whether this extreme scenario requires legislative reform.

32. Triangulation Protocol for Measuring Informal Competitive Pressure (Methodological Proposal). A sectoral estimation protocol combining supply chain surveys, mystery shopper techniques, digital and platform-based evidence, and cross-checking with administrative records, in order to provide a quantitative basis for the inclusion, or justified exclusion, of informal supply in market definition and the assessment of substantial market power. These are proposals rather than tested COPROCOM practices.

33. Traceability of Digital Payments as an Evidential Trail (Forward-Looking Proposal). The widespread use in Costa Rica of immediate electronic payment systems (SINPE Móvil) among low-formality businesses suggests a potential avenue for the transactional reconstruction of income during the evidential phase, subject to the necessary legal safeguards governing access to such information. This is presented as an area for future exploration rather than as an established practice.

34. Adapting Leniency Channels for Small Agents (Design Proposal). Exploring accessibility adjustments to the leniency programme for small and medium-sized enterprises involved in local or trade association-based coordination arrangements of limited scale, whose access to legal advice may be restricted, as a means of improving detection in poorly documented markets.

35. Pro-Competitive Formalisation Advocacy (Existing Capacity Under Expansion). COPROCOM has undertaken advocacy regarding regulatory barriers to entry that directly affect the formalisation of markets. In the Study on Competition and Free Competition in Professional Services in Costa Rica²¹, the Commission recommended that the Executive Branch abolish the minimum fees established by professional associations for their services, a restriction that limits professional autonomy, facilitates collusion and increases the cost of services that use them as inputs. COPROCOM also recommended limiting compulsory professional membership, as a significant barrier to entry, to situations in which it is duly justified and where less competition-restrictive alternatives do not exist. In Opinion No. 27-2022, concerning the Draft Law on Collaborative Private Transport Services²², COPROCOM recommended that platforms should not be subject to requirements more specific than necessary, in order to avoid discouraging the entry of new firms or leading existing firms to exit the market. It also supported the Public Services Regulatory Authority's proposal to establish maximum, rather than fixed, taxi fares, allowing downward price negotiation as a step towards eventual fare liberalisation where effective competition can be demonstrated. According to the explanatory memorandum accompanying the draft legislation, based on information provided by one of the platform companies, approximately 28,000 individuals were earning their livelihood as transport platform drivers in January 2020. The draft also envisaged that the Costa Rican Social Security Fund (CCSS) would establish a differentiated mechanism for the formalisation

²¹ COPROCOM, Opinion No. 002-2022, Study on Competition and Free Competition in Professional Services in Costa Rica.

²² COPROCOM, Opinion No. 27-2022, dated 2 November 2022, Legislative File No. 23110.

and collection of social security contributions from those independent service providers. This represents the most direct connection, within Costa Rican experience, between competition advocacy and the design of formalisation instruments for platform workers. COPROCOM has also conducted advocacy regarding technological neutrality in public procurement²³, recommending that the principle of non-discrimination between technologies be extended to all markets and not merely the sectors expressly covered by legislation. This third scenario, namely where a regulation exists but compliance is so costly or burdensome that individuals prefer to remain informal, demonstrates that formalisation and the promotion of competition are ultimately the same task. If the State simplifies procedures and administrative burdens, particularly municipal licensing requirements, it achieves two objectives simultaneously: more businesses become formalised; and more new businesses are able to enter and compete because they no longer face the heavy barrier that previously prevented their entry.

6. Conclusions

36. Costa Rica's experience suggests four key messages for the regional debate. First, informality should be treated for what it is within competition proceedings: a problem of evidence and measurement, not a legal category and not a defence. The functional concept of the economic agent ensures that the law applies broadly, while the ILO definition reminds us that informality is not the same as illegality. Second, informal supply should neither be ignored nor presumed. Its competitive significance must be demonstrated on a functional basis, and Costa Rican merger precedents show both the feasibility of incorporating it into competition analysis and the costs of doing so without a clear methodology. Third, in the area of sanctions, national practice already contains the foundations of a doctrine of evidential gradation proportionate to the level of market formality. Codifying this practice through interpretative guidance would provide legal certainty both for economic agents and for the authority itself and constitutes the reform likely to yield the most immediate benefits. Fourth, sanctioning policy must strike a balance between two symmetrical risks: impunity resulting from a lack of data and the exclusion effect, without forgetting that the informal agent may also be, as demonstrated by the Rice case, a party deserving protection against the coordinated power of the formal segment.

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The Telecommunications Superintendency (SUTEL)

1. Introduction

1. The Telecommunications Superintendency (SUTEL, by its Spanish acronym) serves as both the regulatory body and the competition authority for the telecommunications sector in Costa Rica²⁴. It is responsible for regulating, enforcing, monitoring, and controlling the legal framework governing telecommunications, which includes, among other duties, the management and control of the radioelectric spectrum, as well as the application of the sector-specific competition regime.
2. The local regulatory framework enables SUTEL to investigate and penalize anticompetitive practices involving "current or potential" operators and providers, which encompasses economic agents that do not hold an operating authorization or title²⁵.

2. Case Background

3. In 2015, the Ministry of Science, Innovation, Technology, and Telecommunications (MICITT, by its Spanish acronym) requested SUTEL to conduct a comprehensive analysis of the narrowband radiocommunication market²⁶. This task entailed analyzing market conditions; determining the need to incorporate new telecommunications service providers; assessing demand; performing economic analyses to determine the value of the associated spectrum; and identifying specific available bands or channels for an eventual public bidding process or tender as the allocation mechanism.
4. Following this request and a series of technical analyses, SUTEL concluded that, upon the entry into force of the General Telecommunications Law ²⁷ in 2008, the commercial exploitation of the spectrum requires a concession title obtained through a public bidding process, and that historical reservations had to be subjected to the new regime. In practice, this implied the existence of a market featuring economic agents whose rights had expired under the new legal order, and who, should they wish to retain spectrum for the provision of narrowband services, were required to participate in an open public bidding process. Furthermore, as a step prior to the competitive process—and for the purpose of ascertaining the amount of available resource—SUTEL conducted a review of historical databases, verified the validity of permits, and contacted companies requesting them to declare whether they continued to use the resource.
5. Additionally, a study on the use and availability of the bands was conducted based on field measurements carried out with the National Spectrum Management and Monitoring System (SNGME, by its Spanish acronym). In that study, SUTEL identified the frequencies that were considered available for allocation; however, it issued a caveat that future concessionaires could face processes to eliminate harmful interference due to

²⁴ General Telecommunications Law, Law No. 8642; Law of the Regulatory Authority for Public Services, Law No. 7593; and Law on the Strengthening of the Competition Authorities of Costa Rica, Law No. 9736.

²⁵ Articles 11, 19, 23, 26, 52, 53, 54, and 56 of the General Telecommunications Law, Law No. 8642.

²⁶ Communication channel that uses a narrow range of frequencies within the radioelectric spectrum to transmit data and voice.

²⁷ General Telecommunications Law, Law No. 8642.

historical reservations and extended uses, including potential non-regular uses—thereby highlighting the existence of potential irregular spectrum uses.

6. As a result of the study, SUTEL concluded that a public bidding process to incorporate providers of narrowband telecommunications services was both necessary and feasible. It identified the bands recorded as available, recommended a sealed-bid auction format with a second-price rule due to its transparency and simplicity—particularly in markets featuring bidders of varying scales—and proposed national and regional allocation schemes to allow for regional frequency reuse and to accommodate the projected user volume, acknowledging the existence of multiple geographically distributed interested parties.

7. Internally, SUTEL established organizational structures to prepare for the bidding process. The SUTEL Council appointed an interdepartmental group as the Bidding Committee, tasked with executing the procedures for the narrowband public tender. Based on the technical studies, public policy guidelines from MICITT, and the Executive Branch's formal instruction initiating the tender²⁸, this Committee drafted a preliminary tender document (*precartel*). In this manner, the bidding process was established as the primary mechanism to regularize the commercial use of narrowband radiocommunication frequencies, integrate informal operators into the formal concession regime, and promote the efficient and competitive use of the spectrum.

8. The narrowband frequency bidding procedure was conceived as a public tender²⁹, processed under the general rules governing public bidding in Costa Rica, with the objective of regularizing and efficiently allocating the narrowband spectrum to formal operators as a result of an eventual concession award. Accordingly, three bidding companies were declared eligible, and the technical criterion concluding the instruction was subsequently issued and forwarded to MICITT in accordance with the established procedure.

9. However, following the completion of this stage, SUTEL became aware of facts that could constitute indications of possible coordination among potential bidders in the tender. Specifically, a publication in the national newspaper *Diario Extra*, released in October 2021, reported that the only three bids received in the tender were submitted by three corporations whose legal representatives were siblings and, furthermore, shared board members on their respective Boards of Directors.

10. Additionally, SUTEL received a document bringing information regarding these same facts to the Authority's attention. The information provided, analyzed jointly with the newspaper article, served to signal the potential existence of conduct warranting an analysis from a competition law perspective.

11. These background events provided the basis for the Directorate General for Competition to initiate a preliminary investigation phase, aiming to determine whether the disclosed facts could constitute a cartel (absolute monopolistic practices) within the framework of the public bidding procedure for the allocation of narrowband frequencies.

²⁸ Executive Decree No. 283-2020-TEL-MICITT of December 8, 2020.

²⁹ Bidding Procedure No. 2021LN-000001-SUTEL.

3. Application of competition law in informal markets

12. In 2021, the General Directorate of Competition of SUTEL initiated a preliminary investigation to determine the possible existence of absolute monopolistic practices in the public tender for the narrow-band radiocommunication market³⁰.

13. During this stage, SUTEL faced difficulties in obtaining relevant information from one of the investigated parties. Through several requests, the party was asked to provide the necessary information for analyzing the facts under investigation; however, the party refused to furnish it, a circumstance that compelled the Authority to take additional measures to obtain the required information. Considering this situation and considering that the required information was indispensable for the exercise of its legal powers regarding competition matters, SUTEL resorted to judicial assistance as provided for under the Costa Rican legal system³¹.

14. The judicial assistance request allowed SUTEL to obtain relevant elements for the development of the investigation and highlighted the importance of having effective mechanisms to ensure the cooperation of investigated agents when the requested information is necessary for the exercise of the Authority's powers. This episode brought to light one of the challenges competition authorities can face in obtaining timely access to information essential for clarifying the facts under investigation, particularly when dealing with agents that show resistance to cooperating with the proceeding.

15. Following the collection and analysis of the evidence, the preliminary investigation was concluded, and the report³² detailing its results was issued, recommending the commencement of the instruction phase of the special proceeding. Subsequently, in 2024, the instruction and statement of charges phase was initiated, in which the alleged wrongdoers were formally charged, based on a degree of probability, committing a series of alleged infractions as detailed below.

16. First, an agreement between potential competitors to refrain from participating in the tender and to exchange information for that purpose, as potential bidders agreed—through various sessions held within a trade association or business grouping—not to participate in Tender 2021LN-000001-SUTEL, during which references were made to ensure the tender failed through joint abstention using phrases such as "Let nobody show up" and references to "loyalty" to the agreement, thereby agreeing to communicate and align positions among themselves.

17. Second, the participation of natural persons in said conduct, acting on behalf of the involved legal entities; the conduct of coordinated abstention and exchange of information was materially attributed to certain natural persons who acted on behalf of the companies accused of designing and executing the agreement.

18. Third, assisting, facilitating, or promoting the agreement to refrain from participating in the tender and the exchange of information associated with that conduct; this conduct was attributed to a trade association, as SUTEL determined that, although the association does not compete in the market, it assisted, facilitated, and/or enabled the absolute monopolistic practices of the potential bidders by organizing the meetings.

³⁰ File GCO-OTC-PM-01538-2021.

³¹ Article 111 of the Law on Strengthening the Competition Authorities of Costa Rica, Law 9736.

³² Resolution ROTC-00066-SUTEL-2024 of April 5, 2024 - Resolution of the investigation into the possible commission of Monopolistic practices.

19. Finally, the agreement among potential competitors to coordinate bids and exchange information for that purpose, since, despite the existence of a non-participation agreement, three of the potential bidders submitted seemingly independent bids for the tender, even though they belonged to the same economic group and shared board members as well as other resources, such as premises and computer equipment for their business operations.

20. Upon conclusion of the instruction phase, the file was forwarded to the SUTEL Council as the higher competition authority for the decision-making stage. During this stage, an oral and private hearing was held with the participation of the investigated parties, including four natural persons, six legal entities, and one trade association. At said hearing, the parties fully exercised their right of defense through the presentation of legal arguments, the taking of documentary and testimonial evidence, and closing statements, with all proceedings duly recorded and incorporated into the administrative record.

21. Furthermore, prior to issuing the final resolution, SUTEL requested the non-binding opinion of the Commission for the Promotion of Competition (COPROCOM, by its Spanish acronym), in accordance with the applicable regulations; the authority endorsed the technical analysis conducted by SUTEL and the substantiation of the investigated anticompetitive practices.

22. Following a comprehensive analysis of the administrative file and the evidence gathered, the Council determined that the commission of the four investigated practices had been substantiated, including the existence of coordination among potential competitors aimed at affecting the tendering process subject to the investigation. Additionally, during the decision-making stage, the SUTEL Council examined the existence of economic interest groups among certain investigated parties, identifying economic and control links that were relevant to evaluating the relationship between specific investigated entities and its potential impact on the analyzed coordination. The determination of the sanctions was based on the legal and regulatory framework in force³³, which sets forth the applicable criteria for their imposition, as well as the methodology³⁴ for calculating the corresponding fines.

23. This methodology considers factors such as the gravity of the infraction, the harm caused, intentionality, the duration of the conduct, recidivism, market share, and the financial capacity of the infringer, to ensure proportional and consistent sanctions.

24. During the sanctioning phase, significant challenges emerged from both legal and economic perspectives. On the one hand, several of the involved parties did not hold the status of telecommunications operators or service providers—that is, they did not hold a valid enabling title—which highlighted some of the limitations an authority faces when exercising its sanctioning powers; for instance, the absence of a record of earnings for such agents hindered the determination of their financial capacity for sanctioning purposes.

25. On the other hand, to determine the fines applicable to legal entities, it was necessary to perform an individual analysis of each agent's financial capacity, utilizing available financial information and adjusting the amounts according to the aggravating and mitigating circumstances identified in each case. In one case, the lack of financial

³³ General Law on Telecommunications, Law on Strengthening the Competition Authorities of Costa Rica, and the Regulations on the Competition Regime in Telecommunications of SUTEL.

³⁴ Regulations on the Telecommunications Sector Competition Regime - https://www.sutel.go.cr/sites/default/files/normaticascompetencia/reglamento_regimen_sectorial_de_competencia_en_telecomunicaciones_alcance_93_la_gaceta_90_23-05-2023.pdf

information provided by one of the investigated parties compelled SUTEL to resort to official external sources, including information from the Tax Administration of the Ministry of Finance, to obtain the necessary data to properly apply the sanctioning methodology.³⁵

26. The SUTEL Council concluded that the conduct under investigation caused the suspension of the public tender, delayed the allocation of the radio frequency spectrum, generated additional costs for the Administration, and damaged trust and credibility in the competitive process.

4. Conclusions

27. The bid-rigging case in the process for awarding concessions to provide narrow-band services constitutes a relevant experience for analyzing the application of competition law in markets undergoing formalization processes.

28. The investigation made it possible to substantiate collusive conduct aimed at affecting a radio frequency spectrum assignment proceeding, demonstrating that anticompetitive practices can materialize not only through bid coordination, but also through concerted abstentions from participation intended to alter the outcome of competitive processes.

29. This case also highlighted the importance of possessing robust evidentiary tools for detecting and substantiating this type of conduct, as the joint assessment of direct and indirect evidence (for example, audio recordings, meeting minutes, and exchanges of strategic information) allowed for the reconstruction of the facts and demonstrated the coordination among the involved parties.

30. The handling of the case also brought to light various regulatory and procedural challenges. Outstanding among these are the limitations stemming from the participation of economic agents that did not hold the status of telecommunications operators or providers, as well as the difficulties in obtaining financial information necessary to determine fines.

31. The experience gained from this case demonstrates that market formalization processes can generate unique challenges from a competition perspective. Likewise, it confirms the importance of having appropriate legal, institutional, and methodological tools to investigate and sanction anticompetitive conduct in sectors where regulatory and competition objectives converge.

³⁵ Article 119, Law 9736.