

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

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I:
Informal Economy in Latin America and the Caribbean: Implications for
Competition Policy**

- Contribution from Costa Rica -

18-19 September 2018, Buenos Aires, Argentina

The attached document from Costa Rica (SUTEL) is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session I at its forthcoming meeting to be held on 18-19 September 2018 in Argentina.

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JT03435280

Session I: Informal Economy in Latin America and the Caribbean: Implications for Competition Policy

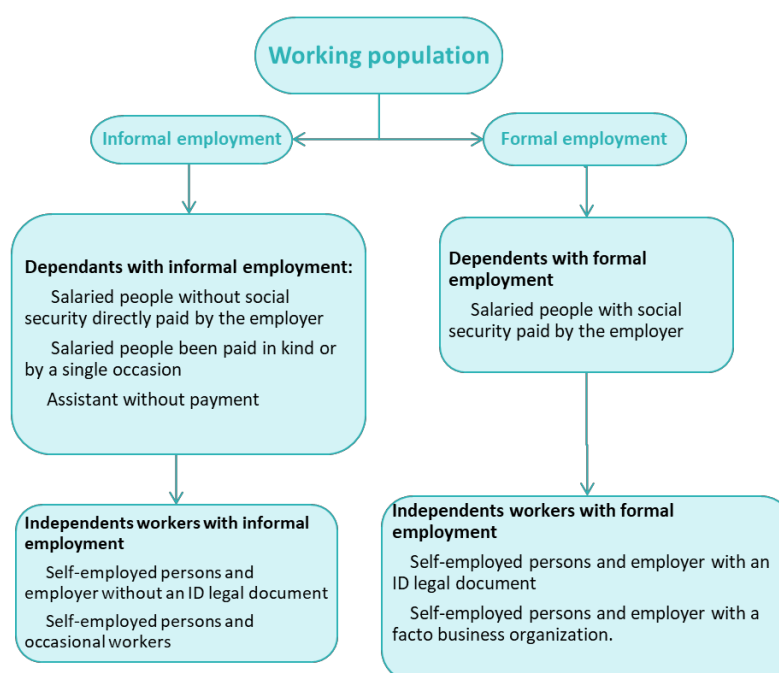
Informal Economy in the Telecommunications Sector

- Contribution from Costa Rica (SUTEL)* -

1. Introduction

1. The Costa Rican definition of informal employment uses the criteria of the International Conference of Labor Statisticians of the International Labor Organization (ILO), according to which a definition must be based on the job characteristics. Therefore, the classification of informal employment used by the National Institute of Statistics and Census (Instituto Nacional de Estadísticas y Censos - INEC) includes, among others, wage earners not registered in the social security system, non-remunerated helpers and self-employed persons in unincorporated businesses. The Figure below lists the criteria used by INEC to produce statistics related to the informal sector.

Figure 1. Costa Rica: Elements employed by INEC to calculate informal employment.



Source: Estrategia Nacional para la Transición a la Economía Formal.

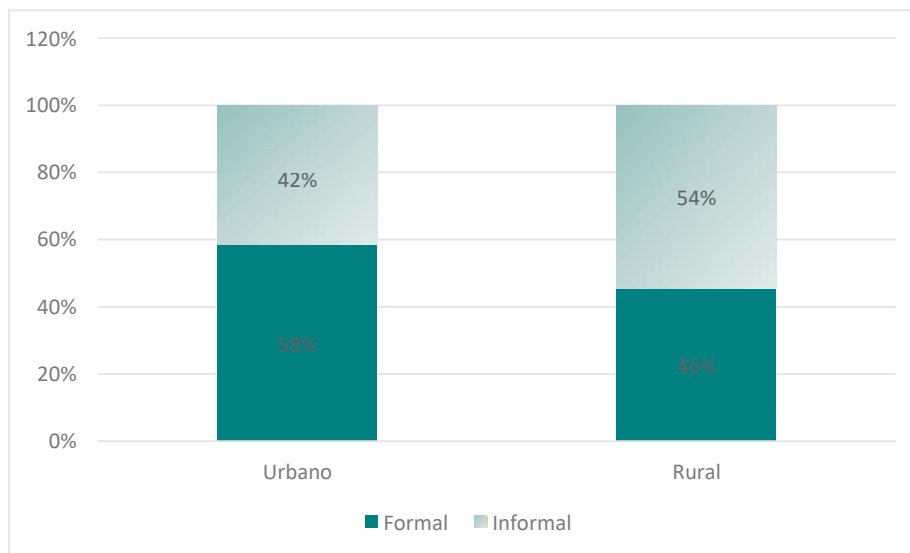
* Contribution of the Superintendency of Telecommunications of Costa Rica for the Latin American and Caribbean Competition Forum 2018.

2. Overall Situation of Costa Rica

2. Before examining informality in the telecommunications sector, it is worth noting some general characteristics of the Costa Rican informal economy to set the framework of the overall telecommunications sector.

3. Since 2012, the informality rate in Costa Rica has exceeded 40%, in fact reaching 45% in 2018, equivalent to 965,127 workers. This situation highlights some differences at the urban and the rural level, where the highest informality rate is seen in rural areas, as depicted in the Chart below.

Chart 1. Costa Rica: Distribution of the national working population with formal or informal employment; in percentages; year 2018

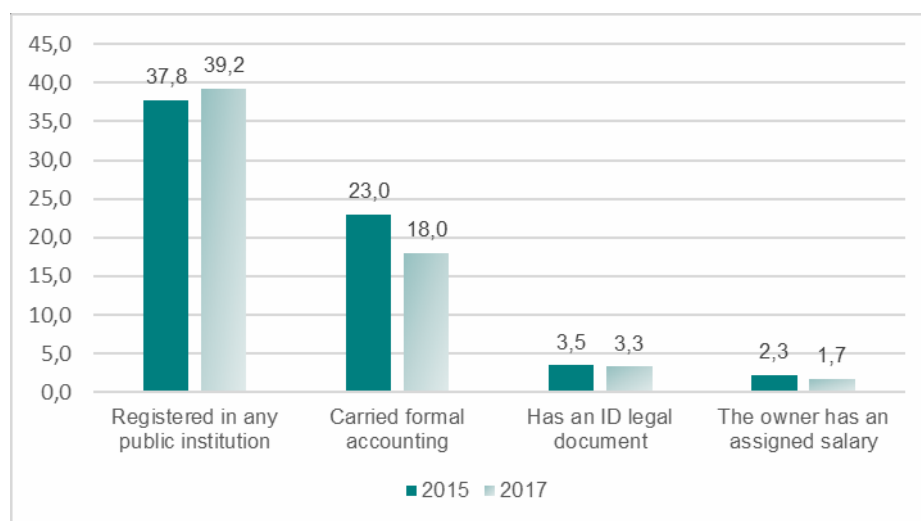


Source: Developed in-house based on INEC data.

4. As indicated in the National Strategy for the Transition to a Formal Economy (Estrategia Nacional para la Transición a la Economía Formal), the economic activity with the highest concentration of informal workers in 2017 was commerce (20%), followed by industry (17%) and households as employers (15%). These three sectors represent 52% of the informality in the country.

5. The report also highlights the type of establishments that afford informal labor to such persons, showing a clear link between this form of employment and micro- and small-enterprises. An 87% of these informal workers are employed at establishments consisting of 1 to 5 persons, where single-person establishments represent around 47% of informal labor.

Chart 2. Costa Rica: Characteristics of micro-enterprises in the formal sector; in percentages; years 2015 and 2017.



Source: Developed in-house based on INEC data.

6. Finally, it is worth indicating that the Ministry of Labor and Social Security (Ministerio de Trabajo y Seguridad Social - MTSS) has identified the following elements as the main causes of informality in the country:

- Access to, and relevance of, education and technical/professional training;
- Complex paperwork and procedures to register companies;
- Restrictions linked to tax systems and social contributions.

3. State of the Telecommunications Sector

7. The Costa Rican telecommunications sector, which is regulated, was opened in 2008 and has been growing over time, for a total of 147 operators in 2017.

8. Although the authorization procedure applied by the Superintendency of Telecommunications (SUTEL) requires compliance with a series of requirements that aim to guarantee the formality of service providers, including registration in the social security system and certifications of incorporation, the telecommunications sector is not foreign to the appearance of a small group of illegal service providers.

9. The number of reports or claims filed in recent years in connection with the existence of illegal operators providing services at the informal level has been on the rise; to date, thirteen reports have been filed, only one of which is currently in process. These cases reported have mostly dealt with the provision of wireless services, particularly internet services (6 cases) and subscription television (satellite) (6 cases). For SUTEL, one of the mechanisms to identify the existence of informality is precisely for the company to evade the regulatory scope, i.e., that is operate unlawfully.

10. As part of its powers as regulator, SUTEL has investigated and found that such services are provided by small companies, very frequently one-person companies that, besides not being entitled to provide these services, are additionally not registered with the tax authorities or the social security system, for instance.

11. The telecommunications sector where most informal/illegal services have proliferated is sound broadcasting¹. As will be discussed below, while 13 cases of illegal telecommunications service provision, which includes Internet access, subscription television, business connectivity and fixed and mobile telephony, have been reported to date, the cases concerning sound broadcasting amount to 55.

12. Since 2015, most of these reports received by SUTEL come from the National Radio Chamber (Cámara Nacional de Radios - CANARA), followed by other legal radio operators, and even users themselves, indicating the existence of informal operators that work outside the law. A total of 55 cases of alleged illegal operators have been reported to date.

13. This number can be contrasted with the fact that there are currently 80 different companies authorized to provide this type of service (39 on FM and 52 on AM²).

14. This shows that the informality issue also affects the Costa Rican telecommunications sector, and at a level similar to that of the informality rate that affects the country as a whole, or perhaps higher. The proportion between cases reported and total number of service providers (legal+reported) is 38%.

15. Reports reveal that, just like with the national situation, informality in the telecommunications is most notorious in rural areas. For example, of the illegal radio stations reported to SUTEL, a 76.4% (42 reports) corresponds to stations in rural areas and 23.6% (13 reports) correspond to stations located in the Greater Metropolitan Area (urban area).

16. Overall, the informal provision of telecommunications services triggers a series of concerns, including:

- Development of possible unfair competition in detriment of players that comply with the relevant legal and taxing obligations, producing an imbalance for formal players.
- Effects on end users, in the event of services that require compensation or payment, users cannot claim their rights in connection to the provision of such service.
- Existence of possible service quality issues (mostly interference) or problems caused by damage to user-owned devices.
- Unlawful actions that affect law-abiding agents, such as damage to third-party networks or use of third-party networks to provide services.

17. Besides these concerns, the situation of informality/illegality raises other concerns at SUTEL in connection with its powers as sectorial competition authority.

¹ Law 8642 provides that SUTEL is not in charge of the authorization process for broadcasting services.

² Note that some companies are authorized to operate on both frequencies, AM and FM, so the total number is lower.

18. The major inconvenience brought about by informality regards merger approval processes and the analysis of monopolistic practices, where the higher the informality/illegality rate of economic agents operating in the sector, the lower the actual chance for competition authorities to adequately define relevant markets and quantify substantial power, which are necessary to adequately weigh this type of cases.

19. In this sense, if the portion of the economy that operates informally is high, competition authorities are less able to reflect the market reality in their studies, impact the market through measures, and correct any market distortions.

4. Promotion of Competition

20. In its recent initiative entitled “National Strategy for the Transition to a Formal Economy,” a three-party agreement among workers, employers and government, Costa Rica defined four lines of action to reduce informality, namely:

- a Technical Professional Training
- b Social Protection
- c Process Facilitation
- d Tax Simplification

21. As part of its defense of competition, SUTEL is committed to facilitate paperwork processing. In line with the Secretariat’s request for contributions, SUTEL considers that competition authorities must “*systematically review the laws to determine which regulations represent barriers to entry and restrict competition*” in the sense that “*strict and burdensome regulations to start a business may prevent entrepreneurs from accessing the formal economy.*”

22. SUTEL is particularly committed to determine the relevance of regulations in order to streamline paperwork processing. Prior to issuing new regulations or rules, the draft text will be consulted and made available for public comment for a period of ten business days.

5. Conclusion

23. An informal economy affects the development of healthy, open competition and impacts the Treasury and workers’ rights. Recognizing that informality is the result of multiple causes, the competition authorities, as part of their objective to promote competition, must take all measures within their reach to help reduce the informality rate, including efforts to eliminate the barriers to entry of new agents, and eliminate regulations that hinder the entry of new agents into the market and affect their level of competition.

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