

Unclassified

English - Or. English

19 May 2022

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

Integrating Consumer Behaviour Insights in Competition Enforcement – Note by Costa Rica

24 June 2022

This document reproduces a written contribution from Costa Rica submitted for Item 9 of the 138th OECD Competition Committee meeting on 22-24 June 2022.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/behavioural-insights-in-competition-enforcement.htm>

Antonio CAPOBIANCO
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

JT03495608

Costa Rica

1. SUTEL operation regarding the protection of end-users and competition defense.

1. The Superintendence of Telecommunications (SUTEL) is the body responsible for regulating, implementing, monitoring and controlling the telecommunications legal system¹.

2. As is the case with other authorities, in terms of institutional design, SUTEL has a concurrence of functions. Thus, among the different functions of SUTEL there are both the defense and promotion of competition and free competition in the telecommunications sector and networks that support sound and television broadcasting services of free access², such as ensuring and protecting the rights of telecommunications users.

3. In order to fulfil these two major tasks, SUTEL has the General Directorate of Competition (DGCO, for the Spanish acronym), which is responsible for the defense and promotion of competition, and the General Directorate of Quality (DGC, for the Spanish acronym) responsible for the protection of user's rights, being SUTEL's Council the superior of both said.

4. Specifically, the DGCO is responsible for processing and resolving the investigation and instruction stages of the special competition procedure for the sanction of possible monopolistic practices, illicit concentrations and other infringement of competition regulations. The DGCO is also responsible for processing and recommending to SUTEL Council on the procedures for notification of mergers and the promotion and advocacy of competition³.

5. In the other hand, the DGC is the directorate responsible for exercising regulation from the perspective of quality of service for which it processes, investigates and resolves the complaints of the end users of telecommunications services; assesses the quality of service of operators and providers⁴. With the aim of preventing duplication of functions and ensuring consistency in institutional actions, SUTEL, in terms of internal coordination, has taken steps to ensure that when the DGC receives a complaint from an end-user which is not to be treated as a complaint but as a situation relating to the Sectoral Competition Regime in Telecommunications, carry out the internal transfer to the DGCO so that it can define the appropriate approach in relation to the defense and promotion of competition.

6. Likewise, in terms of internal coordination, other initiatives have arisen that have made it possible to incorporate elements related to consumer behavior in certain processes related to the Telecommunications Competition Sector Regime. In particular, the DGC, in compliance with its duties to oversight compliance with the quality standards of telecommunications services (landline, mobile telephony, mobile Internet, fixed Internet

¹ Article 1 of the Law on the Strengthening and Modernization of Public Entities in the Telecommunications Sector, Law 8660.

² Article 60 of the Law on the Regulatory Authority of Public Services, Law 7593 and article 2 of 2019 Competition Reform Act, Law 9736.

³ Article 46 bis of the Internal Rules of Organization and Functions of the Regulatory Authority of Public Services and its Deconcentrated Body (RIOF).

⁴ Articles 41 and 42 of the Internal Rules of Organization and Functions of the Regulatory Authority of Public Services and its Deconcentrated Body (RIOF).

and pay-tv)⁵, hire a survey service for an annual nationwide survey on perceived quality of telecommunications services. These surveys are processed and their results are presented in a report that is published on the website⁶.

7. Through the application of this survey tool of perception and satisfaction of the quality of telecommunications services, the DGC has supported the work of advocacy and promotion of competition of the DGCO with the inclusion of specific questions in the survey, providing the DGCO with valuable information on the perception of end-users of a particular service and geographical area of interest to the DGCO, these inputs have been used for analysis by the sectorial competition authority, in the following section a specific case in which this information has been applied will be discussed.

2. Integration of consumer behavior, case by case.

8. In 2019, SUTEL completed the "Market study for access to common telecommunications infrastructure in horizontal and vertical condominiums, apartment buildings, closed residential buildings and all those residential properties that have common facilities necessary for the provision of telecommunications services available to end users"⁷.

9. The origin of this study was the recurrence of complaints and reports filed by end users of telecommunications services with SUTEL, which generated indications that competition could be unjustifiably being restricted through denial of access to telecommunication operators to certain types of residential buildings, in particular: horizontal condominiums, vertical condominiums, closed residential buildings and apartment buildings and that this restriction could be occurring as a result of eventual exclusivity agreements between the developers or builders of the housing projects, who were presumed to have signed exclusivity contracts with a given operator so that it would develop the internal networks of the condominium in exchange for the developer or builder subsequently restricting the access of other telecommunication providers to the housing project, limiting competition and thus guaranteeing a captive market of users to a given telecommunications service provider.

10. For this study it was considered important to analyze the possibility of users to choose the operator and telecommunications services providers of their preference due to the relevance that their attitudes and consumer decisions have in the competitive dynamics of the market of interest, thus, with the support of the DGC, it was possible to apply specific consultations to end-users not only on the availability of telecommunications services to users living in horizontal and vertical condominiums, apartment buildings and closed residential buildings, in the counties of interest in the "Survey of perception and satisfaction of the quality of telecommunications services", but also about the perception of such consumers about situations in which competition may be being restrained and their possibility to freely choose the supplier of their choice.

⁵ Article 33 of the Regulation on the provision and quality of services of the Regulatory Authority of Public Services.

⁶ Available on the official SUTEL website at: <https://www.sutel.go.cr/pagina/percepcion-de-los-usuarios>

⁷ Available on the official SUTEL website at: https://www.sutel.go.cr/sites/default/files/estudio_mercado_acceso_de_telecomunicaciones_a_condominios_y_otros_0.pdf

11. Thus, for the purposes of this study, the issues that were of interest to measure through the user survey were:

- The possibility of choosing the telecommunications operator that provides the user with the service.
- Users' perception of the effect of not being able to choose the telecommunications operator that provides the service

12. The following was extracted from the results of the survey:

2.1. Pay-tv service

13. 18% of the people surveyed indicated that they did not have the possibility of choosing the pay-tv service provider in the location where they live.

14. Of this percentage, 56% of users considered that having an exclusive television service provider was something negative.

2.2. Fixed internet service

15. 13% of the people surveyed indicated that they lived in a residence with access to a single fixed internet service provider

16. Of this percentage, 46% of users considered themselves affected by the limitation in the choice of the fixed internet service provider.

17. This reflects that, despite the limitation in the choice of the fixed internet service provider, most of the respondents do not consider that this situation will affect them in any way.

2.3. Landline

18. In the case of landline, the results of the survey indicated that 11.5% of those interviewed did not have the opportunity to choose their provider, however, of these only 33% consider that this situation affects them in some way.

Table 1. Summary of results of the perception survey. SUTEL, 2018

| Indicator | Pay-tv | Fixed Internet | Landline |
|--|--------|----------------|----------|
| Number of properties identified with a single supplier | 71 | 69 | 72 |
| % users who cannot choose the service provider | 18% | 13% | 11,5% |
| % of users considered affected | 56% | 46% | 33% |

19. In this regard, the market study carried out by SUTEL indicates that the analysis of the results of the services yielded two relevant findings. First, the landline service, in percentage terms, has the largest number of respondents who can choose their operator, and at the same time, has the respondents who feel less affected by the limitation of choice. Second, the pay-tv service stands out for having the highest percentage of residents who cannot choose the operator of their choice, as well as the service that concentrates the highest percentage of respondents who consider themselves affected by this situation.

20. The completion of the survey of end users indicates that there is a significant perception (in some services higher than 50%) by consumers that the restrictions on

competition, which in turn are reflected in limitations to freely access a certain provider, are not harmful to them. This led the study to conclude, among other elements:

- That there is a lack of knowledge both in terms of competition and its benefits for consumers.
- That consumers are unaware of their own rights as end users of telecommunications services to freely choose and change their service provider.

21. Therefore, one of the recommendations generated by the study was to **inform users of telecommunications services that they have the right to freely choose and change operators**, so that users can demand their rights, thus preventing the establishment of regulations or agreements of condominium assemblies that restrict the entry of telecommunications operators to given properties constituted under the condominium regime to the detriment of competition and the well-being of the user himself.

22. Likewise, it was considered relevant to issue a "Guideline to good management practices of shared residential infrastructure of telecommunications networks aimed at residents and administrators of condominiums, apartment buildings and closed residential buildings", whose objective is to provide guidance to inhabitants and administrators of condominiums, since **the need to strengthen general knowledge regarding competition and free market access and its benefits for consumers is recognized**, through the identification and elimination of barriers that limit the possibility of network operators and service providers, to reach the people who live in these types of properties.

Figure 1. Guidelines to good management practices of shared residential telecommunications network infrastructure aimed at residents and managers of condominiums, apartment buildings and closed residential buildings. SUTEL, 2021.



3. Other applications.

23. On the other hand, it is relevant to mention that SUTEL in order to analyze merger cases⁸ where landline and mobile telephony services have been involved, in particular with regard to the composition of the product market, has taken into account, among other aspects, the perception of the user on substitutability between these services, determining that from the user's point of view, landline is not a substitute for mobile telephony; and rather there is a complementary relationship between the two, so they cannot be considered as substitutes. This perception was obtained from a statistical services that was contract to be carried out in 2015⁹ for the development of a household survey that allows analyzing the access, use and perception of end users for telecommunications services. In this sense, SUTEL as a competition authority, taking into account this and other sources of information, coincides with what is indicated by users regarding the complementarity of fixed and mobile services, for which it analyzes them in different product markets.

4. Conclusions

24. SUTEL is a sectorial competition authority whose functions also cover the protection of the end-user in the telecommunications sector, so that the interaction between these two units takes place in an agile and fluid manner, both in terms of coordination of functions and access to information and interinstitutional cooperation.

25. To date, information on user behavior has been obtained from end-user surveys carried out through public procurement.

26. Regarding the addition of information on user behavior as an input for competition law analyses, it should be mentioned that up to now it has been included mainly in two types of analysis, market studies and merger notification.

27. In one of these cases, the consumer behavior insight was consistent with what the competition authority would have concluded without this input, however, in the other case, including this type of information meant that the authority could know additional variables that were taken into account to issue a comprehensive resolution consistent with the situation.

⁸ Most recent case: RCS-321-2020 “RESOLUTION IN THE FIRST PHASE ON NOTIFICATION FILING OF

MERGER FILED BY TELEFONICA DE COSTA RICA TC, S. A. AND LIBERTY LATIN AMERICA LTD.”, file T0053-STT-MOT-CN-01697-2020

⁹ Abbreviated bidding 2015LA-000006-SUTEL "Contracting of statistical services for the preparation of a household survey that allows analyzing the access, use and perception of end users for telecommunications services"