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

Serial Acquisitions and Industry Roll-ups – Note by Costa Rica

6 December 2023

This document reproduces a written contribution from Costa Rica submitted for Item 11 of the 141st OECD Competition Committee meeting on 5-8 December 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/serial-acquisitions-and-industry-roll-ups.htm>.

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Costa Rica

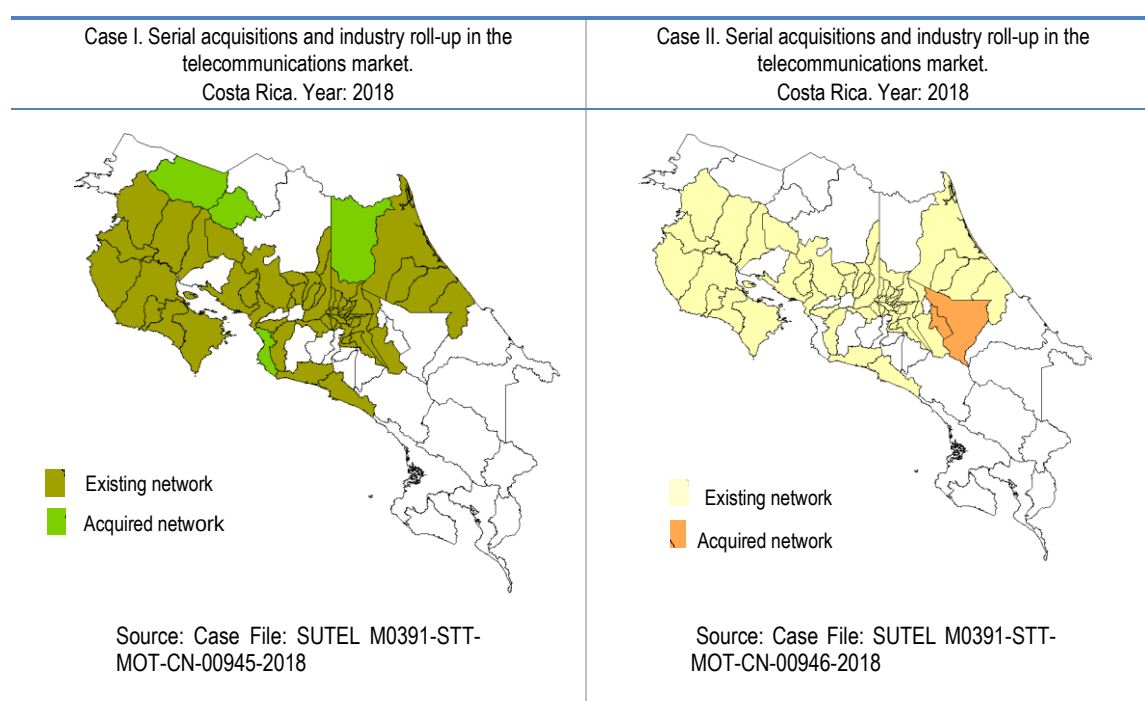
1. Telecommunication services in Costa Rica opened up in 2008, thereby promoting a more dynamic market. This gave rise to the emergence of new service providers, and subsequently to a series of acquisitions and mergers in the sector, which is typical of a market with increasing competitive maturity.
2. This being the case, the first discernible effect on the competing market was the presence of a greater number of companies, albeit with clear and evident differences among them in terms of capital, service portfolios, and nationwide coverage.
3. The only telecommunications service in Costa Rica that operated under equal competitive conditions prior to opening up to competition was the provision of TV subscription services. As a result, with the opening of the market, the companies that offered this service, via their own fixed fiber-optic or coaxial cable networks, simultaneously expanded their portfolio of services and their infrastructure. Other companies began operations in areas with high population density and profitability, and with ample access to supporting infrastructure. In addition, there were a number of emerging companies that tapped into niche markets by providing fixed network services in underserved rural areas that were largely protected from the growing competitive pressure in the metropolitan areas.
4. Given that the value of a telecommunications network is exponential to its coverage and services, the proliferation of emerging operators continued until the industry reached a certain level of maturity. Companies gradually began to expand their networks to more remote areas and competition increased in rural communities.
5. In connection with network expansion, access to utility pole infrastructure¹ (predominantly owned by electric companies) became indispensable to the expansion of fixed networks, in particular for companies seeking to increase their coverage, since the telecommunications sector, as a network-based industry, is highly dependent on the supporting infrastructure.
6. There are very few companies on a national level with ownership of supporting infrastructure for telecommunications networks, including an incumbent company with nationwide coverage, two municipal companies, and four regional cooperatives with limited geographic coverage. In addition, with the exception of one company belonging to the incumbent in the telecommunications sector, all of these electric companies also provide telecommunications services.
7. Each of these utility pole owning companies have their own technical, economic, commercial, and legal terms and conditions regarding the access and use required for the installation of telecommunications networks. In view of the fact that, in Costa Rica, the process of negotiation can often take prolonged periods of time (up to several months), together with the growing infrastructure saturation, this all has led to a sudden rise in the interest of utility pole attachment agreements signed years past, given the value they represent to some of the companies seeking to expand their coverage.

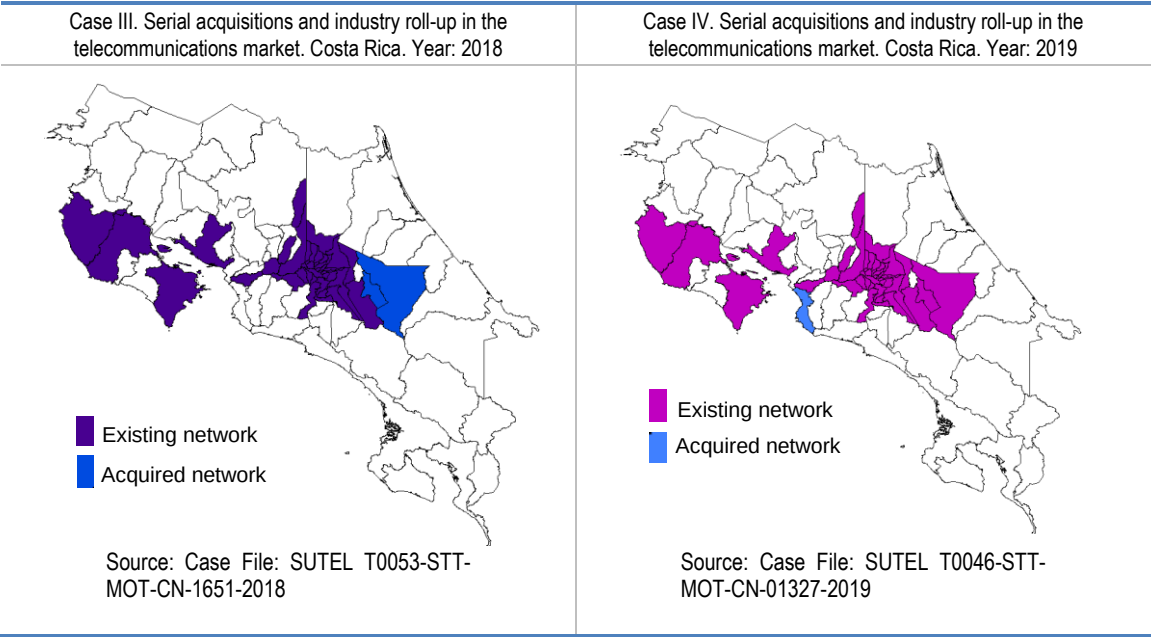
¹ Utility poles are defined as “long frustoconical elements attached to the ground and placed vertically to support antennas, or other telecommunications equipment, that may be installed in public land”. [Construction Regulations of the “Instituto Nacional de Vivienda y Urbanismo” \[National Institute of Housing and Urban Development\]](#). Article 3.

8. In connection therewith, in the period prior to the Covid-19 pandemic, there were a series of consecutive acquisitions by the larger fixed network operators of small regional companies that had signed utility pole attachment agreements. Even though every consolidation is unique in nature, in this case it is nevertheless possible to identify four transactions of the nature and purpose described above, that is to say: where the purpose is to acquire companies that had previously signed utility pole attachment agreements to obtain access to the supporting infrastructure. In other words, the purpose of these acquisitions was not the network or the customers of the acquired companies, but rather the previously negotiated lease agreements, given that the timeliness of the access to the supporting infrastructure is a determining factor for growth rate and customer acquisition.

9. These consecutive acquisitions were made by two of the largest fixed network operators, “Millicom Cable Costa Rica S.A.” and “Telecable S.A.”.

Figure 1. Serial acquisitions and industry roll-up in the telecommunications market





10. It is worth mentioning that, unlike in other markets where there are thresholds for prior notification of concentrations, Costa Rican regulations do not establish a notification threshold for concentrations in the telecommunications sector, since all transactions in this sector must be made known to the competition authority, namely: the Superintendency of Telecommunications (SUTEL). Therefore, given that these four transactions involved telecommunications service providers, and that they met the characteristics of a concentration, the acquisitions were notified to and analyzed by SUTEL.

11. The effects of all serial acquisitions and industry roll-ups in the telecommunications industry are examined on the basis of the same standard of analysis, that is: to determine whether the object or the effect of the concentration significantly impedes competition in the relevant market affected by the transaction, or in other similar or substantially related markets (Article 101, “Ley de Fortalecimiento de las Autoridades de Competencia” [Strengthening of Competition Authorities Act], Act No. 9736)².

12. The standard of analysis is essential for analyzing transactions that form part of a chain of acquisitions, as it allows the competition authority to conduct a more in-depth study of the effects that the transaction could have on the market, regardless of the increase or abuse of substantial market power derived from the specific business under examination.

13. The transactions that were analyzed by SUTEL, and which are of interest to this roundtable, coincide in several aspects: (1) buyer characteristics; (2) seller characteristics; and (3) motives. The acquirers, who have nationwide coverage and a diversified portfolio of services, purchased small companies that provide fixed telecommunications services in specific regions, with fragmented operations and a residual market share. The strategic objectives of the acquisition are associated with the growth and geographic expansion of its current networks, seeking efficiency through the integration of scale, scope and network effects.

² Act No. 9736 was passed in 2019. By virtue of numerous reforms and amendments to the regulations, at a legal and regulatory level, the matter of law regarding competition was updated. Among other changes, the standard of analysis of concentrations was revised.

14. It should be noted that in every transaction that was analyzed, no risks to competition were found. In general terms, as the acquirees contended with network modernization processes and competitive pressure, from which they were initially exempt, they gradually lost market positioning and were left with low residual market share. The sale provided access to capital in the face of a possible closure of operations.

15. The buyers sought immediate access to supporting infrastructure to ensure their geographic expansion in Costa Rica.

16. An additional component to these transactions is the positive effect it had on the end users. This effect is most likely due to the modernization of the networks, to an increase in efficiency, and to the economies of scope that resulted from powerful competitors that entered the market in specific regions across the country.

17. It should be noted that, given the characteristics of the industry, the intensive technological change, the bundling of services, the increasing yields, the presence of four companies that account for a majority of the market share with respect to nationwide fixed network services³, and the continued existence of regional operators and providers, it is reasonable to expect that acquisitions are likely to continue as a natural outcome.

³ [Report on the Statistics of the Telecommunications Sector, Costa Rica, SUTEL, 2022.](#)