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Competition and Corruption in Public Procurement – Note by Costa Rica

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Costa Rica

The Case of the Telecommunications Sector

1. In Costa Rica, two competition authorities coexist: the national authority, which oversees the vast majority of Costa Rican markets, with the exception of one—the telecommunications market. This sector is managed by the Superintendency of Telecommunications (hereinafter, SUTEL), which serves as the sector-specific competition authority and also acts as the telecommunications regulator. Thus, in the exercise of its advocacy and competition promotion powers within the telecommunications sector, SUTEL has been developing various instruments aimed at strengthening efficiency, transparency, and free competition in public procurement procedures related to telecommunications services, such as market studies, opinions, manuals, guides, and various dissemination activities.

2. SUTEL has sought to maintain a close coordination relationship with the national authority, the Commission for the Promotion of Competition (COPROCOM). Together with this authority, SUTEL has developed instruments and organized dissemination activities to ensure a more competitive public procurement market for telecommunications services. Likewise, efforts have been made to create materials and workshops in conjunction with the Public Procurement Directorate, the governing body for state purchases in Costa Rica, to serve as instruments that foster market improvement.

3. Furthermore, from the enforcement perspective of competition law, SUTEL is responsible for investigating and sanctioning collusive bidding detected in the telecommunications sector. Therefore, the power to prosecute acts of corruption in public procurement processes is shared among different institutions, including the Judicial Branch in criminal matters, the Comptroller General of the Republic, or the contracting administration regarding administrative sanctions.

1. Recent Evolution of Administrative Contracting Regulations and Strengthening of the Sanctioning Regime

4. Since 2010, Costa Rica has implemented several regulatory reforms to strengthen state capacities regarding competition and public procurement. In terms of competition, the Law on Strengthening Competition Authorities in Costa Rica (Law 9736) was enacted. Regarding administrative contracting, the General Law on Public Procurement (Law 9986) was issued, which entered into force in 2022 along with its Regulations (Executive Decree 43808).

5. The enactment of Law 9736 represented a significant milestone in updating the competition framework, incorporating more effective mechanisms for the detection, investigation, and sanctioning of anti-competitive practices, including those linked to public procurement.

6. In the field of public procurement, Law 9986 and its Regulations establish a comprehensive system that promotes, among other principles, integrity, effectiveness and efficiency, transparency, equality, and free competition in the processes of acquiring goods, works, and services by the State. Specific provisions are incorporated to prevent corruption and collusive practices during all phases of contracting, both by the administration and by subjects other than the administration. This includes the obligation for bidders to adhere to

an anti-corruption and good commercial practices commitment, which expressly prohibits, among others, offering gifts, exercising undue pressure, presenting false information, or engaging in collusive practices. Furthermore, the regulatory framework establishes an express obligation for institutional procurement departments to inform the competition authority of these facts.

7. Consequently, the current Costa Rican legal regime emphasizes the need for non-restrictive bidding terms and promotes the use of open procedures, utilizing early detection mechanisms and the application of sanctions.

8. In this sense, the implementation of the Integrated Public Procurement System (SICOP, by its Spanish acronym for “Sistema Integrado de Compras Públicas”) must be highlighted. This constitutes a unified system that articulates public acquisition and contracting processes at the national level, facilitating transparency, efficiency, and control in public management. SICOP functions as a key instrument for supervision and auditing, allowing for the early identification of irregular conduct that could affect free competition and the correct administration of public resources. This type of digital platform is consistent with international recommendations regarding transparency and traceability in public procurement.

9. However, despite these advances, the current legislation includes a series of exceptions to ordinary procedures, which can be summarized as follows: a) Procurements subject to special procedures derived from international agreements; b) Procurements between public law entities; c) Single-source procurements; d) Procurements for sponsorship and social media; e) Procurements for open training services; f) Currency procurement by the Central Bank of Costa Rica; g) Indispensable and urgent purchases via petty cash; h) Strategic alliances authorized by law; i) Procurements of artistic, cultural, or intellectual services; j) Procurements for indeterminate repairs; and, k) Procurements for academic or research activities of public universities. Among these, the exception for procurements between public law entities has required particular attention from SUTEL.

2. Convergence Between Administrative, Civil, and Criminal Responsibilities

10. In the area of sanctions, Costa Rican regulations establish a clear differentiation between administrative and civil faults, which regulate the conduct of officials and private individuals within the administrative sphere, and criminal offenses linked to public procurement.¹

11. Faults under competition law in public procurement are administrative in nature and involve collusion by bidders or potential bidders². For public officials, sanctions are established for those who assist, facilitate, or participate in such monopolistic practices,³ with fines ranging from approximately \$1,000 to \$680,000⁴.

¹ Article 118, 119 and 121 of the General Law on Public Procurement.

² Article 53 subsection d) of the General Law on Telecommunications.

³ Article 119 subsection h) of the Law on Strengthening Competition Authorities of Costa Rica.

⁴ Calculated according to the ruling by the High Council of the Judiciary in session 113-2025 held on December 16, 2025, article LXV, which established that the base salary to be applied for defining penalties for the commission of criminal acts contained in the Penal Code, as well as those contained in other laws referring to the aforementioned regulation, is ₡462,200 (approximately \$1,000).

12. On the other hand, regarding administrative faults specifically within the scope of public procurement, the law includes behaviors such as: The illicit fragmentation of purchases with the purpose of evading major bidding procedures, the breach of duties, such as the omission of documents in the electronic file, the violation of the prohibition regime for participating in decisions where a personal, family, or commercial interest exists.⁵ Sanctions for officials range from written warnings and suspension without pay for up to three months to dismissal without employer liability, depending on severity and recidivism.⁶

13. Furthermore, certain conducts transcend administrative matters and acquire a criminal character under the Costa Rican Penal Code and the Law against Corruption and Illicit Enrichment in Public Service. These include bribery (proper and improper), as well as related offenses⁷; illicit enrichment, legislation or administration for personal gain, irregular overpricing, falsehood in the receipt of goods and services, irregular payment of contracts, and influence peddling⁸, among others.

3. The Public Procurement Market for Telecommunications Services

14. According to SICOP data, between 2024 and 2026, the State has made 404 awards for telecommunications services, provided by 19 operators, totaling \$130,818,689.

15. For the year 2025, only 8% of authorized telecommunications operators participated in public procurement procedures. Awards in telecommunications services between 2024 and 2025 represented 1.1% of the Gross Domestic Product (GDP) of telecommunications and information services during that period.

16. Additionally, 62% of awards between 2024 and 2026 corresponded to ordinary procedures, 24% to exception procedures, and 14% to special procedures. Exception procedures showed an average annual decrease of 15.5 percentage points; in 2025, they represented 9% of total awards, compared to 40% in 2023.

17. SUTEL has used its legal powers to promote competition in public procurement processes for telecommunications services. As part of these efforts, SUTEL conducted the "Market Study regarding the public procurement of telecommunications services" in 2022, whose main objective was to determine the existence or absence of obstacles, barriers, and/or distortions unrelated to the principle of free competition in the State's public purchasing processes for telecommunications services, as well as in the supply by active operators and/or providers within the Costa Rican jurisdiction.

18. Among the findings of the Study, it stands out that for the year 2020, the State budgeted an amount of ₡77,272 million, which represented 2.7% of the annual budget for the acquisition of services. Likewise, the Market Study mentions that out of the total number of service providers in 2020, only 40% participated as State bidders; the remaining 60% of service providers stated that they preferred to offer their services in the private sector given that doing so in the public sector involved a high investment in bureaucracy.

⁵ Articles 27, 33, 119, 125 of the General Law on Public Procurement.

⁶ Artículo 124 of the General Law on Public Procurement.

⁷ Articles 347, 348, 350, 352 of the Penal Code.

⁸ Articles 45, 48, 49, 50, 51 and 52 of the Law Against Corruption and Illicit Enrichment in Public Service.

19. The Market Study identified three types of situations among those surveyed in the public procurement procedures for telecommunications services: one corresponding to the occasional participation of service providers based on project profitability and company capacity; another related to the definition of requirements in the bidding terms for the object of the procurement that limited and automatically excluded providers; and the third situation corresponded to the use of exceptions stipulated in Law 7494⁹, which allowed for direct contracting between state-owned companies.

20. Regarding the use of exceptions, the Market Study showed that the exception procedures for contractual activity carried out between public law entities, between the years 2016 and 2020, represented 37% of the public procurements of telecommunications services carried out during that same period, while the total number of exceptions represented 86%.

21. The total amount awarded under the exception of contractual activity carried out between public law entities represented 80% of the total amount allocated by the State to the procurement of telecommunications services in 2020; likewise, the Market Study mentions that all public companies that met the condition of being a telecommunications service provider were awarded at least one tender between the 2016–2020 period; however, it highlights that one state telecommunications provider obtained the highest awarded amounts.

22. In relation to the concentration in the use of exceptions for contractual activity carried out between public law entities in telecommunications service procurements by the State, the Market Study evidenced that the telecommunications operators existing in the market were capable of providing services with higher added value and that only 17% of telecommunications operators with an enabling title between 2015 and 2020 were awarded telecommunications service contracts processed through SICOP.

23. Summed to the previous market study and with the purpose of continuing to strengthen efficiency, transparency, and free competition in public procurement procedures, SUTEL, both individually and jointly, has issued a series of instruments, among which is the "Manual of Good Practices in Public Procurement Procedures: Framework Agreements". This manual was published in 2025 and aims to promote the principles of competition and free competition in the use of framework agreements within public procurement procedures related to telecommunications services. The Manual addresses the topic of the use of framework agreements in public procurement from a legal and competition perspective and emphasizes that an inadequate use of this figure can lead to temporary market closures, excessive concentration of awardees, and increases the risk of tacit collusion among bidders. To avoid this situation, the manual guides toward the use of open framework agreements that promote the entry of new competitors into the market and transparency that guarantees fair and necessary functioning.

24. During 2025, COPROCOM in conjunction with SUTEL issued the "Guide for the Prevention and Detection of Collusion in Public Procurement Processes". This Guide is aimed at the public administration departments of Costa Rica in charge of conducting public procurement, as well as competition authorities. Furthermore, its purpose is both to contribute to the detection of manipulation in public procurement procedures and to guide the public administration in designing procurement processes that reduce the risk of manipulation practices.

⁹ The Administrative Contracting Law, Law 7494, corresponds to the administrative contracting regulations that Costa Rica had in place until 2022, when it was repealed and replaced by Law 9986.

25. The Guide provides a review of the Costa Rican regulatory framework related to public procurement procedures, offers an explanation of what constitutes manipulation in these types of procedures, and mentions the frequent forms adopted by collusion in public purchasing processes. Additionally, it details market conditions that increase the risk of carrying out these types of practices, offers a checklist for the identification of collusive practices in public tenders, and also shows guidelines that help prevent collusive practices in the different stages of the public procurement procedure.

26. The Guide mentions actions that correspond to acts of corruption and their difference with respect to collusion; likewise, it indicates that acts of corruption or negligence have the potential to eliminate competition in public procurement procedures, hence the importance of their identification, which, in conjunction with factors such as transparency—utilized appropriately—can help in their detection.

27. The document describes data analysis techniques used for the detection of collusive practices in public procurement processes and explains how the use of this type of analysis contributes to the collection of evidence that could lead to the opening of investigation processes.

4. Future Tools in Telecommunications Procurement Analysis

28. SUTEL is currently developing a tool for the automated analysis of public procurement in the telecommunications sector. This tool aims to modernize market monitoring by leveraging public data and the institution's technological capabilities to strengthen SUTEL's investigative tasks.

29. The tool automatically responds to queries such as: Which operators or telecommunications service providers are satisfying the State's demand for telecommunications services? Which institutions are acquiring services and how much are they paying? What is the proportion of telecommunications service contracts by operator and/or service provider? The tool under development is fed by the entire universe of contracts registered in SICOP and also allows for the extraction of data related to public procurement in telecommunications services.

30. Likewise, the tool has allowed for the generation of associations between awardees and institutions, which has facilitated the revelation of market dynamics important for investigations of anti-competitive practices. Currently, the tool is in a phase focused on the automation of data collection, model generation, and testing, as well as the development of reports; the completion of the tool's development is scheduled for the last quarter of 2026.

5. Conclusions

31. Costa Rica's experience, through SUTEL and in conjunction with other competent authorities, evidences a sustained commitment to strengthen the regulatory framework and institutional capacity in the prevention and sanctioning of corruption and anti-competitive behavior in public procurement. The synergy between the competition regime, public procurement legislation, and criminal provisions forms a comprehensive framework that seeks to guarantee competitive public purchasing processes free of corruption.

32. The regulations, together with technological tools and inter-institutional work and collaboration, facilitate the timely detection of irregularities and contribute to protecting the public interest, promoting a more efficient telecommunications market.

33. Likewise, challenges persist related to the effective participation of bidders, the reduction in the use of exceptions, and the strengthening of analytical tools for the early detection of collusive behavior, which constitute priority areas for improvement in line with international standards.