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**Working Party No. 2 on Competition and Regulation**

**Competition and Professional Sports – Note by Costa Rica**

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More documents related to this discussion can be found at  
[www.oecd.org/daf/competition/competition-and-professional-sports.htm](http://www.oecd.org/daf/competition/competition-and-professional-sports.htm).

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## Costa Rica

### 1. Sports organization and regulation

1. In 1998, Costa Rica enacted Act 7800, which governs sports in general and establishes the *Instituto del Deporte y Recreación* [ICODER, Sports and Recreation Institute, if translated]<sup>1</sup> as a semiautonomous institution of the State that has the objective of promoting, supporting, and fostering individual and team sports and recreation. As the governing entity, it has other functions, such as fostering the strengthening of private organizations related to sports and recreation under a legal, regulatory framework that allows their development.

2. Other functions of ICODER are: Promote and foster sports at a national and international level; develop a sports and recreation infrastructure plan; oversee that professional and competition sports include, compulsorily, short, mid, and long-term programs to promote little leagues or prospects; promote the inclusion of programs for disabled persons in the work plans of sports organizations in the country; execute a national training and specialization plan for trainers, sports journalists, referees, sports physicians, sports managers and officers.

3. Nevertheless, the entities responsible for overseeing, directing, organizing, and regulating competition sports (adapted and regular) are: the National Olympic Committee of Costa Rica, the National Paralympic Committee of Costa Rica, and the sports federations and associations representing the country nationally and internationally.

4. The National Olympic Committee and the National Paralympic Committee are non-profit, public interest organizations independent from each other that hold the exclusive rights to use words like Olympic, Olympian, Paralympic, Paralympian, and Paralympic Games, respectively, as well as the respective flags, icons, and official logos of the respective international entities.

5. For their part, federations and sports associations are subdivided into first-degree and second-degree associations. A first-degree sports or recreation association comprises at least ten persons of legal age and aims to promote the sports or recreation activity in general, or otherwise, one or more sports disciplines. A second-degree sports or recreation association has the exact nature and objective of a first-degree association but requires two or more first-degree associations to establish it and a legal capacity independent from the members that comprise it. This type of association is differentiated by including the words “federation,” “league,” or “union” in their names.

6. All the associations and federations that wish to subject themselves to the valid regulations and the governance of the ICODER must be registered before the National Register after the ICODER has qualified whether such registration is appropriate. At the time of registration, the Institute and the Register shall certify that the associations and federations comply with the democratic principles to elect their board of directors, functioning, and organization. The Institute is authorized to invalidate any election that violates the stated principles and guarantees.

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<sup>1</sup>Under Act No. 7800, dated April 30, 1998, available in: [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?nValor1=1&nValor2=26290](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=26290)

7. Under valid laws, sports associations are authorized to engage in activities that allow them to acquire financial means to fulfill their objectives. As a result, sports associations can be organized as companies or as *sociedad anónimas deportivas* [sports corporations, if translated].<sup>2</sup> Nevertheless, under such laws, any profits and benefits these associations derive from their business activities must benefit the sports association and may not be distributed or paid out to associates.

8. Nevertheless, sports associations or federations are granted certain benefits, such as the reduction of one-fourth of the rights, taxes, and revenue stamps that they have to pay at the time of incorporation or to amend their bylaws or to file any other registrations, as well as in the notarial fees payable. They are further released from the payment of the assets tax and are entitled to reduced income tax rates.

9. Now then, for an association or federation to be able to **hold the national representation that the ICODER grants it**, they must satisfy a set of requirements, including: A) be duly registered in the Register of Associations of the National Register, with legal books duly legalized, and its bylaws up to date; B) apply a regional organization model that guarantees the massification, promotion, and practice of sports at a national level; C) **organize, schedule, and execute annual championships or tournaments in all divisions**; d) produce a work plan that includes activities scheduled for the year for all concerned divisions, and the respective budget, including minor leagues programs, as well training programs; and e) **preferably, internationally represent the sports activity. Sports federations that are national representatives of a sport are the only ones that can be named “costarricense” [Costa Rican], “de Costa Rica” [of Costa Rica], and “nacional” [national].**

10. **Becoming the national representative of a sport allows an association or federation to work alongside ICODER to promote, perfect, and grow the sport through tournaments and championships for the different categories and branches, as well as to prepare national representatives who will participate in international events and other activities that aim to improve the level of their sport.**

11. The ICODER transfers resources to associations or federations with representation at a national level, as well as other duly registered sports or recreation associations.<sup>3</sup> For 2023, despite budget cuts, the ICODER budgeted the transfer of 2.7M dollars to national associations or federations, and 209 thousand dollars to other associations that are not nationwide.

12. According to the website of the ICODER, over 40 national federations and entities are authorized in, among others, the following sports: football, basketball, handball, fencing, surf, golf, motorcycle racing, shooting sports, chess, cheerleading, cricket, weightlifting, gymnastics, hockey, judo, karate-do, arm wrestling, skateboarding, skating.<sup>4</sup> Furthermore, over 60 local associations and 16 sports entities for disabled citizens are also registered.

13. Finally, it must be stated that Act 7800 also creates the Sports Conflicts Administrative Tribunal to which players, trainers, athletes, and sports directors can resort to settle any pecuniary claims they might have, notwithstanding the legal nature of their

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<sup>2</sup>before Act No. 7800 was enacted, these associations were governed under the Associations Act. However, this new Act enabled their organization or transformation into *sociedades anónimas deportivas*.

<sup>3</sup>With the exception of sports associations related to football (soccer).

<sup>4</sup> Available at: <https://icoder.go.cr/directorio-entidades-deportivas>

contractual relationship, provided these arise from sports or sports-labor related obligations with an association, federation, or sports corporation recognized as such by the ICODER and are related to the practice of a sport or recreation activity.

## 2. Organization of sports leagues

14. As mentioned above, sports associations or federations with national representation organize national tournaments and championships for the different branches and categories of the sport.

15. Nevertheless, no legal impediment exists for other existing organizations, whether governed or not by the ICODER, to organize local or national organizations of the same sport. However, a lack of national representation can limit the participation of clubs or athletes in subsequent international events. Likewise, tournaments or championships depend on the type of sport, the characteristics of the athletes, and the degree of organization in the country.

16. For example, in the case of football, the *Federación Costarricense de Fútbol* [Costa Rican Football Federation, if translated] is made up of the following leagues: UNAFUT (Professional First Division League), LIASCE (Professional Second Division League), LINAFU (Amateur Football League (Third Division)), LINFUTSAL (Futsal League), LIFUPLA (Beach Football League), and UNIFFUT (National Women's Football Union). Each of them organizes their championships.

17. In this regard, it is worth considering that, while there is a wide range of sports to practice in Costa Rica, soccer holds great importance for Costa Rican society from a cultural and economic perspective. For that reason, the Institute of Social Studies in Population [IDESPO] of the "Universidad Nacional" [National University] states that "*Soccer is a sport of major relevance for the country, as it's unquestionably the most popular sport for the Costa Rican population and, consequently, the sport with the most media exposure and coverage on an everyday basis*"<sup>5</sup>, most particularly, the men's first division of the soccer league.

## 3. Competition and sports

18. The regulations that govern competition in Costa Rica<sup>6</sup> does not establish any exemptions for companies or associations of the sports sector. Hence, the Comisión para Promover la Competencia [Commission to Promote Competition, if translated] (COPROCOM) can investigate anti-competitive behaviors and sanction them accordingly, as well as analyze the economic concentrations of any companies that meet the requirements that such regulations establish.

19. In the same vein, the Telecommunication's Superintendency (SUTEL), as this sector's competition authority, is responsible for investigating and sanctioning anticompetitive practices. Likewise, SUTEL is in charge of conducting preliminary analyses of economic concentrations by the network operators and the telecommunications

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<sup>5</sup> Institute of Social Studies in Population. "Universidad Nacional" [National University] (2022). [Report: The perception on the current sociopolitical situation in Costa Rica.](#)

<sup>6</sup> Promotion of Competition and Effective Defense of the Consumer Act, No. 7472; and Strengthening of the Competition Authorities of Costa Rica Act, No. 9736.

service providers that meet regulatory requirements (including networks that support free access to radio and television broadcasting services).

20. In the case of the investigation of anti-competitive behaviors, the only limitation that would eventually apply, in COPROCOM's analysis, is related to the condition of being an economic agent established by applicable laws to incur in any sanctionable practice. This condition establishes the obligation that an entity participates, in any form, in any economic activity, either as a buyer, seller, supplier, or consumer of goods or services, either directly or on behalf of others<sup>7</sup>, a characteristic that some entities might not eventually fulfill.

21. Nevertheless, the legal nature of sports associations or otherwise of federations is not *a priori* a limitation for the application of competition regulations. The definition of an economic agent includes all incorporated or unincorporated legal entities, and, therefore, their organizational form is irrelevant.

22. On the other hand, it is not clear whether Costa Rican competition laws can fully apply to the sports labor market, specifically to “no-poach” agreements, which refer to agreements between competitors that state that employees from other teams cannot be solicited, which restricts competition in the labor market. This is because the regulations specifically list the types of agreements that can be construed as absolute monopolistic practices. Hence, if any behavior can eventually be linked to such types of agreements, it can be sanctioned. However, the wording of such articles cannot be easily linked to the labor market, although this will ultimately depend on the specifics of each case.<sup>8</sup>

#### 4. The link between sports broadcasting and the telecommunications market

23. The audiovisual content industry, as it relates to **television**, is comprised of multiple levels. Multiple actors interact across various stages of the supply chain before the content is ultimately distributed to the end consumer.

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<sup>7</sup>Article 2 of Act No. 7472 defines an economic agent as follows: “*Regarding the market, any individual or legal entity, either unincorporated or incorporated, public or private, participating in any form of economic activity, as a buyer, seller, supplier, or consumer of goods and/or services, on their name or on behalf of others, irrespective of whether they are imported or domestic, or that have been produced or loaned by the economic agent or a third party.*”

<sup>8</sup> “*Article 11 - Absolute monopolistic practices. Absolute monopolistic practices are the contracts, agreements, arrangements, actions, or combinations among current or potential competing economic agents with any of the following purposes:*

*a) Setting, raising, arranging, or manipulating the purchase or sale price at which goods or services are offered or demanded in the market.*

*b) Establishing the obligation to acquire, produce, process, distribute, or market only a restricted or limited number of goods or the provision of a restricted or limited number, volume, or frequency of services.*

*c) Dividing, distributing, assigning, or imposing portions or segments of a market, current or future, on the basis of certain customers, suppliers, times, geographical areas, or spaces.*

*d) Establishing, arranging, or coordinating tenders or any abstention in tenders, competitive biddings, auctions, or public auctions.*

*e) Refusing to buy or sell goods or services.*

*f) Exchanging information for any purpose or with the effects referred to in any preceding points.”*

24. The upstream market is composed multiple forms of audiovisual content creators, including: feature films, TV series, documentaries, and live events, among others. A large number of companies compete at a national and international level, namely: Repretel and “Televisora de Costa Rica” [The TV Broadcasting Company of Costa Rica] (at a national level), and Netflix, Amazon Prime, Warner Media, Universal, The Walt Disney Company, and many others.

25. Subsequently, wholesale distribution of audiovisual content extends to the retail distribution market, which includes, among others, television service providers that incorporate the content into their programming or channel grids and transmit it to the end user, the downstream market.

26. Companies that provide traditional TV subscription services, regardless of the method of transmission, are considered to be telecommunications service providers.

27. In practice, vertical integration strategies, whether partial or total, are commonplace in the audiovisual content value chain. This is true of content producers who also act as distributors, or in the case of a complete integration (from production to end-user sale), or even when holding exclusive rights over transmissions.

28. TV subscription companies are compelled to offer a wide range of genres to attract the maximum number of users, however, there is a category of content that could be a determining factor when selecting a TV subscription service among the many options: live sports content<sup>9</sup>.

29. As mentioned above, the men’s first division of the national soccer league is a standout among live Costa Rican sporting events. It possesses mass audience appeal and its very nature makes replication impossible, as even the value of deferred transmission of this type of content is inferior.

30. The dynamics of the audiovisual content industry have the potential to cause and incentivize vertically integrated companies to unfairly displace other companies from the market, including telecommunications service operators competing in the downstream market.

31. Denying access to content, or having direct access to competitively sensitive information about its rivals, could have a direct effect on the competitive dynamics of TV subscription service providers.

32. Even though the audiovisual content market is largely separate from the telecommunications market, it has the potential to disrupt it, most notably when it comes to the content categories that are likely to influence consumer decisions.

## 5. Cases related to the audiovisual industry

33. The most significant experience of COPROCOM concerning the sports sector has been in relation to rights to broadcast sporting events. Although some instances related to kart racing (2008) and taekwondo (2017) are known, both concerning requirements that seemed to limit competition on the types of equipment and uniforms to use in the sport, respectively, these were archived as the behavior was not considered anti-competitive. A

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<sup>9</sup> See The Walt Disney Company & Twenty-first Century Fox. Department of Justice. United States. 2018.

claim about the exclusive right to sell tickets to the Football World Cup Brazil 2014 matches was also archived.

34. Regarding sports broadcasting, the first case submitted to the COPROCOM was related to the exclusive rights awarded for the radio broadcasting of sporting events of the Football World Cup Japan-Korea 2002. This case was also archived, as no sanctionable behaviors were identified. More recently, in 2020, the COPROCOM also analyzed two cases related to the matches in the men's first division of football. These cases were submitted due to changes in relation to how these matches were broadcasted.

35. In Costa Rica, the rights to broadcast the matches of the first division of football (FPD) belong exclusively to the football teams and can be negotiated individually. Hence, the clubs enter into temporary exclusive broadcasting rights agreements that award a license to rebroadcast their games. These agreements can be terminated when better offers are received or otherwise due to circumstances beyond the parties' control, such as the team no longer being part of the first division. A characteristic of the Costa Rican model is that the individual sale is "pure," which means that the rights granted are for when the team that owns such rights is playing at home.

36. Until the 2018-2019 season, open (free) television broadcasters held broadcasting rights for nearly all FPD matches. However, in line with what had been happening globally, a vital pay television company entered the football events broadcasting rights market and acquired the rights of 6 of the 12 FPD teams and some Second Division teams for the 2018-2019 season.

37. This meant that open television networks were no longer able to broadcast all of the games of the championship, while the pay television company broadcasted by including the channels of the open (free) television broadcasters in their programming, which held the rights of the largest teams, in addition to holding the exclusive broadcasting rights of all other matches.

38. So, because of a complaint -presented to both competition authorities- the first case was born related with the rise of a content television company specializing in sports (FUTV) that acquired a sublicense for the broadcasting rights of the two largest television companies and offered such content to pay television companies in the country.

39. SUTEL investigated the possible omission of a prior notification of economic concentration, and an investigation of possible Relative Monopolistic Practices (RMP).

40. The case was dismissed as the transaction did not meet the requirements of a notifiable concentration, and because no evidence was found to suggest that any network operator or telecommunications service provider engaged in an act, contract, agreement, arrangement, or combination of anticompetitive practices, as defined in Article 54 of Act No. 8642.

41. COPROCOM's investigation analyzed whether the company's organization was a concentration that required notification before the competition authorities, as it belonged to one of the licensees of the transmission rights. The case concluded that this was not an economic concentration under the then valid regulations, as this sublicensing was made by third parties and not by the owners of the broadcasting rights, and given the temporary nature of the agreement, which did not exceed five years.

42. The second case is a claim to COPROCOM by a pay television company that acquired the broadcasting rights of six teams, all with relatively small fan bases, and FUTV's alleged refusal to provide the television content unless, in exchange, it sublicensed to it all of the broadcasting rights of the matches -without audio- of the teams for which the pay television company held rights. The investigation carried out, in this case, found that

FUTV had substantial power in the relevant market, whereas it held the broadcasting rights of the matches of the four teams with the largest fan base and that had won nearly all championships, and whereas it would be engaging in a relative monopolistic practice to discourage any company that aimed to participate in the broadcasting rights market.<sup>10</sup> Even though the case was transferred to the Instruction Unit, it was finally archived, and no sanctions were imposed, as the Highest Governing Body considered the existence of an actual lack of interest, given that the companies entered into an agreement after the cable company caved and opted to sell their content to FUTV and, the latter, in turn, sold its content to the company.<sup>11</sup>

43. The foregoing investigations evidence the need to analyze the appropriateness of establishing specific regulations concerning how broadcasting rights are awarded when there is no open and transparent bidding and concerning the time frames during which these are awarded. The investigations further evidenced that at least one of the television broadcasters, specifically the one that established FUTV, is a shareholder and holds at least one seat on the board of directors of the FPD team that is most popular in the country, which poses the question if the time frames of the rebroadcasting license granted effectively have a termination date. Accordingly, the COPROCOM must monitor the behavior of this specific market.

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<sup>10</sup>Resolution RES-INV-013-2022 dated April 21, 2022.

<sup>11</sup> Given the Highest Governing Body's dissenting vote, it was not a unanimous resolution.

## Bibliography

Commission to Promote Competition. Investigations Unit. Resolution RES-INV-019-2021 dated August 18, 2021.

Commission to Promote Competition. Investigations Unit. Resolution RES-INV-013-2022 dated April 21, 2022

[Department of Justice.The Walt Disney y Twenty-first Century Fox.United States.2018.](#)

[Strengthening of the Competition Authorities of Costa Rica Act, No. 9736 Dated September 05, 2019.](#)

[Promotion of Competition and Effective Defense of the Consumer Act, No. 7472.Dated December 20, 1994](#)

[Act organizing the Sports and Recreation Institute \(ICODER\) and its legal framework, No. 7800.Dated April 30, 1998](#)

[Office of the Attorney General of the Republic.Opinion No. 309, dated September 05, 2008.](#)

[Office of the Attorney General of the Republic.Opinion No. 136, dated June 15, 2000](#)

[Regulations governing Act No. 7800, dated August 18, 2000](#)

Institute of Social Studies in Population. “Universidad Nacional” [National University] (2022). Report: The perception on the current sociopolitical situation in Costa Rica.

Telecommunication`s Superintendency (SUTEL). Unit of Investigations and Mergers. ROTC-00052-SUTEL-2021. Dated August 20, 2021. File GCO-OTC-CNN-00344-2020.