Organisation for Economic Co-operation and Development

DAF/COMP/WP2/WD(2025)33

Unclassified **English - Or. English**

3 November 2025

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 2 on Competition and Regulation

Market Studies and other Market Analysis Tools for Competition Authorities – Note by Costa Rica

3 December 2025

This document reproduces a written contribution from Costa Rica submitted for Item 4 of the 80th meeting of Working Party 2 on 3 December 2025.

Federica MAIORANO
Federica.Maiorano@oecd.org

JT03575735

Costa Rica

1. Introduction – Legal and Institutional Framework

1. The Commission to Promote Competition (COPROCOM) and the Superintendency of Telecommunications (SUTEL) are the two competition authorities in Costa Rica. COPROCOM is the national body with general jurisdiction over competition promotion and enforcement, while SUTEL acts as the sectoral authority responsible for safeguarding and promoting competition and free market access in the telecommunications sector and in networks that support open-access radio and television broadcasting services.

2. Both institutions are empowered to conduct market studies under Law No. 9736, *Law on the Strengthening of Costa Rica's Competition Authorities*. Article 20 of this law establishes that each competition authority shall carry out advocacy and promotional activities aimed at fostering improvements in competition and free market access, eliminating or preventing market distortions or barriers to entry, and raising public awareness of the benefits of competition.

3. Article 23 of Law No. 9736 states that each competition authority shall conduct market studies (MS) to deepen their understanding of how markets under their jurisdiction function, identify distortions or barriers to competition and free entry, and promote their removal. In addition, Article 27 requires that competition authorities make these market studies and the resulting recommendations publicly available.

4. Furthermore, Article 9 of Law No. 7472 empowers COPROCOM to carry out market studies even in sectors exempted from competition law, as explicitly established in special legislation. In such cases, COPROCOM may evaluate the competitive conditions and issue recommendations to foster competition in those sectors.

2. COPROCOM's experience in conducting Market Studies

2.1. Market Studies conducted by COPROCOM

5. Since 2020, COPROCOM has carried out multiple markets studies across strategic sectors of the Costa Rican economy, in line with its Market Studies Guide, approved in 2023. These studies have identified both regulatory and behavioral barriers, assessed market structures, and provided evidence-based policy recommendations to strengthen competition. Some notable studies include:

- **Pharmaceuticals** (2025): Analyzed the structure of the markets for laboratories, wholesalers, and pharmacies. It found high concentration among international laboratories, moderate concentration in wholesale distribution, lengthy sanitary-registration procedures, and low consumer confidence in generic drugs. Recommendations included streamlining regulatory procedures and promoting the adoption of unbranded generics.
- **Institutional Procurement Program** (PAI-CNP) (2025): The study revealed limited competition in the selection of large suppliers and an absence of competitive tenders. It recommended redesigning the program to introduce open bidding mechanisms and enhance transparency.
- **Sugarcane and its Derivatives in Costa Rica** (2024): Identified that Law No. 7818 grants LAICA full control over the sugar value chain, creating a closed

structure with weak efficiency incentives. The study recommended reviewing the legal framework to foster competition and transparency in quota allocation among mills.

- **Public Bus TransportConcessions** (2024): Identified high concentration of concessions within a few economic groups and risks due to the absence of competitive tenders. It recommended coordination with the Public Transport Council and the establishment of limits on concession accumulation.
- **Maritime Transport** (2023): Analyzed the continued application of *The Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences*, recommending that Costa Rica withdraws from it, as it enables market-sharing and price-fixing practices.
- **Professional Services in Costa Rica** (2022): Questioned the existence of mandatory minimum fees and compulsory membership in professional associations, proposing reforms to enhance competition and efficiency. The study's results informed legislative initiatives and regulatory reforms.
- **Postal Sector (**2021): Analyzed the regulatory framework governing postal services, market structure, and service provision. COPROCOM recommended the Executive branch to update national legislation to reflect current market conditions and grant the state-owned postal operator more flexibility while maintaining universal service obligations.

2.2. COPROCOM's Institutional Methodology

6. COPROCOM's 2023 Market Study Guide defines a five-phase methodology: (i) market prioritization, (ii) study design, (iii) data collection, (iv) analysis and formulation of recommendations, and (v) ex post evaluation. The process emphasizes stakeholder participation, transparency, and the publication of public versions.

7. Although some market studies were conducted before the formal approval of the 2023 Guide, they all applied a coherent and systematic methodological approach aimed at ensuring analytical quality and usefulness. Typically, the studies combined a legal and economic review of the sector, the collection of documentary and statistical information, interviews with public and private sector stakeholders, and an analysis of competition barriers and distortions. Public-policy recommendations were formulated based on empirical evidence and international best practices. This approach secured consistency, objectivity and comparability of results, consolidating COPROCOM's institutional experience in using market studies as a diagnostic and competition-advocacy tool.

8. Specifically, the Pharmaceutical Sector Study involved interviews with public, private, and academic stakeholders, as well as large-scale purchasers, supplemented by information requests made under Law No. 9736. The methodology followed the principles of uniformity, relevance, and transparency, using three data collection criteria: (i) annual information to identify market trends, (ii) analysis of the ten products and suppliers with the largest sales volumes to determine key actors, and (iii) classification by use, according to the 17 health-related categories of the Consumer Price Index. This approach ensured the generation of comparable and meaningful data for a comprehensive and contextualized analysis of Costa Rica's pharmaceutical market.

9. Likewise, the Sugarcane and Derivatives Study in Costa Rica was based on an in-depth review of the sector's historical, regulatory and economic context to understand the conditions shaping its current structure. The study mapped key actors and value-chain

stages, examined state interventions and regulatory frameworks, and conducted interviews with market participants to complement documentary analysis. This comprehensive approach made it possible to map Costa Rica's sugar cane ecosystem, including its derivative products and the inter-relationships among the various agents, thereby creating a solid analytical basis for assessing competition distortions and barriers in the sector.

2.3. Practical Application and Outcomes of Market Studies

10. Since the enactment of Law No. 9736 in 2019, COPROCOM has integrated market studies as a core tool for identifying structural, behavioral and regulatory failures that restrict competition. On average, the authority conducts one to two studies per year, each of them lasting between six and twelve months depending on sector complexity and data availability.

11. Market selection is based on economic relevance, potential impact on consumer welfare, number of agents involved, and evidence of regulatory rigidities or high concentration. Studies may be initiated ex officio, upon request from another public entity, or because of observations from merger or antitrust case analyses.

12. The three main objectives of Costa Rican market studies are: (i) to generate technical knowledge about market functioning and entry barriers; (ii) to formulate evidence-based policy recommendations that strengthen competition; and (iii) to promote regulatory or institutional changes to address identified distortions.

13. Results have been tangible. The Professional Services study prompted several Executive decrees eliminating mandatory minimum fees in several professional associations; the Maritime Transport study supported the government's decision to withdraw from The Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences; and the PAI-CNP study contributed to review public procurement mechanisms. These outcomes demonstrate that market studies serve as preventive and advocacy instruments, complementing COPROCOM's traditional enforcement role.

14. However, challenges remain in the use of this tool, foremost the dependence on inter-institutional cooperation to implement policy recommendations. COPROCOM has addressed these by signing cooperation agreements, publishing summarized versions that preserve confidentiality, and promoting active dialogue through forums and workshops.

15. To track progress, COPROCOM conducts follow-ups on the uptake of recommendations and incorporates lessons learned into the design of new studies. This incremental approach has strengthened the authority's capacity for ex-post evaluation, in line with OECD recommendations.

2.4. Recommendations arising from market studies

16. COPROCOM's market studies have identified structural, behavioral and regulatory distortions affecting competition across strategic sectors of the Costa Rican economy. Based on their findings, the Commission has issued public policy recommendations to correct these distortions, foster more dynamic markets, and strengthen economic efficiency.

17. In the <u>postal sector</u>, it was recommended to update the existing regulatory framework to better reflect current market conditions, granting the state-owned operator greater commercial flexibility, while preserving the universal service principle and ensuring competitive and sustainable conditions.

18. In the maritime transport sector, COPROCOM recommended to the Executive Branch:

- **General application of Competition Law:** COPROCOM reiterates that competition rules must be applied uniformly to all economic agents, without exemptions that undermine the principles of competition and free market access.
- **Sectoral reform needs:** The main challenge is that certain practices in liner shipping, such as price-fixing and market-sharing agreements, are still not subject to investigation under the Competition Law. Various stakeholders, especially from the export sector, have expressed the need to promote legal reforms in this area.
- **Effectiveness through universality:** The effectiveness of the competition regime depends on its application to every market participant; sectoral exceptions weaken its scope and effectiveness.
- **Harmful effects of restrictive agreements:** International price and market-sharing agreements in maritime transport increase logistics costs and, consequently, consumer prices. Legal mechanisms to prohibit such practices are essential.
- **Outdated international framework:** The original grounds for The Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences are no longer valid; modern forms of cooperation exist that are not inherently anti-competitive.
- **Review of the international legal framework: It is recommended that** the Executive Branch, in accordance with domestic law and public international law, take the necessary steps to render ineffective the Convention's provisions that allow price-fixing and market-sharing practices (Clauses 2 and 13).

19. In the professional services sector, COPROCOM proposed:

- **Elimination of minimum fees set by professional associations.** Such fees limit professional autonomy, facilitate collusion, limit citizens' access to services and sustain higher prices that, in turn, increase the cost of goods and services that use professional services as input.
- **Redefinition of the purpose and functions of professional associations.** Their essential public purpose should be to ensure high-quality professional performance for the benefit of users. Associations are vital for overseeing **liberal professions**. While, for non-liberal professions, firms and employers already have mechanisms to ensure competence and ethics, making compulsory membership unnecessary.
- **Limitation of compulsory membership** to professions practiced independently, that are relevant to the exercise of public functions, and that are highly specialized due to their social impact, since it is in these professions where the public function of professional associations is most essential.
- **Regulation of internal rulemaking by professional associations** to ensure it focuses on ethics and general operation, removing unjustified restrictions on access to and exercise of the profession.

20. In the public bus transport concessions market, it was recommended to:

- **Prevent concession concentration:** The Ministry of Public Works and Transport (MOPT), the Public Transport Council (CTP), and the Public Services Regulatory Authority (ARESEP) should take the necessary measures to ensure compliance with Article 11 of Law No. 3503, preventing the concentration of routes among a few operators, which would limit competition and free market entry in violation of constitutional principles.

- **Promote open and effective tenders:** Whenever concessions are suspended, cancelled, expired or are newly awarded, public tenders must be held to ensure real competition. Conditions or requirements that unjustifiably favor incumbents or limit new bidders should be avoided, while guaranteeing standards of quality, safety and efficiency.
- **Interinstitutional coordination:** It was recommended to communicate the results of the study and its conclusions to the Ombudsman's Office (*Defensoría de los Habitantes*), to support its analyses and actions in the matter and to promote more effective oversight of competition in concessioned public services.

21. In the sugar market, COPROCOM recommended:

- That the Executive Branch promotes the repeal of Law No. 7818 (Organic Law of the Sugarcane Agriculture and Industry), as it is considered outdated and contrary to market efficiency and productivity. It was also suggested to review Articles 443 and 444 of the Fiscal Code (Law No. 8) to eliminate FANAL's monopsony or exclude sugar products and their derivatives from its scope.
- Elimination of production quotas between mills and producers, as well as allowing the free retail marketing of sugar, so that supply and demand conditions determine prices and market structure.
- That the Ministry of Foreign Trade reduces or eliminates tariffs on sugar and its derivatives and avoids including exceptions in future free trade negotiations.
- That the Ministry of Economy, Industry and Commerce (MEIC) refrains from granting antidumping or safeguard measures that limit competition and harm consumers.
- That the Ministry of Health amends Decree No. 39020-S, removing the requirement that sugar fortification be carried out exclusively within national territory, to facilitate competition and the importation of fortified products.

22. In the pharmaceutical sector market study in Costa Rica, it was emphasized the following:

- **Streamline regulatory processes:** It was recommended to improve sanitary registration procedures, reducing waiting times and administrative costs to speed up the entry of new products, especially generics, and foster competition.
- **Strengthening confidence in generic medicines:** It is necessary to promote information campaigns and a clear regulatory framework on bioequivalence to build consumer confidence and reduce information asymmetries that currently favor branded drugs.
- **Review of vertical relationships and structural barriers:** Authorities should monitor exclusivity arrangements between laboratories and distributors, as well as economies of scope in distribution and retail, to prevent anticompetitive effects and ensure a level playing field for new entrants.
- **Limiting the use of price controls:** Since observed profit margins fall within international ranges, COPROCOM considers that price regulation should be exceptional, justified, and temporary, as widespread controls could hinder innovation, supply, and market efficiency.

- **Institutional strengthening:** It was recommended to equip the competition authority with greater technical capacity and resources for the analysis of complex markets and to promote interinstitutional cooperation to comprehensively address the sector's challenges.
- **Technical foundation of public policies:** Regulatory measures must rest on rigorous technical assessments that balance public health, access, and efficiency objectives, avoiding counterproductive effects that harm competition and consumer welfare.

23. Finally, regarding the Institutional Procurement Program (PAI), the recommendations focused on:

- **Focus on the target groups established in the *Organic Law of the National Production Council (CNP)*:** It was recommended that the CNP concentrate the actions of the PAI on micro, small, and medium-sized agricultural, agro-industrial, fishing, and aquaculture producers, in line with the legal mandate, avoiding the inclusion of large suppliers outside the target group.
- **Competitive procurement for products outside the target group:** When it is necessary to acquire goods not produced by target groups, such purchases should be conducted through open and competitive procedures under the *General Public Procurement Law*, with predefined schedules and efficiency and transparency criteria.
- **Leveraging economies of scale:** The Commission proposed strengthening joint purchasing among public institutions to improve prices, capture logistical efficiencies, and generate savings for the State, without undermining the participation of small producers.
- **Competition in products with few suppliers:** For products with few or sole suppliers, such as milk, tuna, oil, flour, or pasta, it was suggested to apply competition mechanisms among all available providers, without restricting participation to domestic producers, thus promoting free market entry and discouraging strategic behavior.
- **Ensure reasonable prices and quality:** CNP must guarantee that public agencies acquire **quality products at competitive prices**, in line with the Attorney-General's Office and Constitutional Court principles on the use of public funds.
- **Continuous PAI evaluation: It was recommended to implement a permanent monitoring system** that compares PAI prices, quality and coverage with private-market benchmarks, detects deviations and allows timely adjustments, while safeguarding small-supplier participation and product traceability.
- **Tie funding to efficiency targets: It was proposed that** PAI resources be subject to efficiency, effectiveness and minimal-distortion targets; forms and regulatory requirements should be reviewed periodically for proportionality, reducing unnecessary burdens and fostering transparent, competitive operation.

24. Taken together, these recommendations underscore the preventive and proactive role of market studies as a tool for competition advocacy, contributing to improving the regulatory environment, spurring institutional reform and promoting more inclusive and efficient economic development.

3. SUTEL's Experience in Market Studies Related to Telecommunications Infrastructure

3.1. Market studies conducted by SUTEL in relation to infrastructure for the provision of telecommunications services

25. For the Superintendence of Telecommunications (SUTEL), as the sectoral competition authority in Costa Rica, access to telecommunications infrastructure is a key issue for the proper functioning and development of the telecommunications market, since its availability, quality, and capacity determine the ability of operators to compete on equal terms, foster technological innovation, and ensure that users have access to quality services.

26. The existence of sufficient passive and active infrastructure, such as ducts, poles, towers, fiber optics, and base stations, not only allows for network expansion but also represents a determining factor for the overall sustainability and competitiveness of the sector. Therefore, it is a priority to have technical studies that identify barriers limiting network expansion and the participation of new players in the market. In this context, SUTEL has developed several market studies aimed at analyzing the conditions of access to and use of telecommunications infrastructure, with the most relevant aspects of these analyses detailed below.

27. In 2019, SUTEL published the "***Market Study on Access to Common Telecommunications Infrastructure in Horizontal and Vertical Condominiums, Apartment Buildings, Gated Communities, and All Residential Properties with Common Installations Necessary for the Provision of Telecommunications Services Available to End Users"***. This analysis was motivated by a growing number of complaints filed by end users of telecommunications services before SUTEL, which suggested that access by telecommunications operators to certain types of residential buildings, particularly horizontal and vertical condominiums, gated communities, and apartment buildings, might be being unjustifiably restricted.

28. The objective of the market study was to determine whether barriers existed to the entry of operators and telecommunications service providers in the internal telecommunications networks of horizontal and vertical condominiums, apartment buildings, and gated communities in the Central Planning Region. The geographic market was limited to this area because, at least since the beginning of the decade, the Central Planning Region has concentrated the highest number of homes located in condominiums, gated communities, or buildings.

29. The document includes a section describing Costa Rican legislation on condominium property, as well as laws related to network deployment and the shared use of telecommunications infrastructure. It also explores legislation on the topic from other jurisdictions. The study presents its results, focusing on fixed telephony, pay television, and fixed internet services, and it specifies the main limitations of telecommunications infrastructure in these types of properties, along with possible solutions.

30. Another market study conducted was the "***Market Study on Access to Common Telecommunications Infrastructure in Business Condominiums and All Commercial Properties with Common Installations Necessary for the Provision of Telecommunications Services"***, published in 2022. The main objective of this study was to determine whether there were obstacles, barriers, and/or distortions unrelated to the principle of free competition in accessing common telecommunications infrastructure in business condominiums and commercial properties nationwide.

31. First, the study provided an overview of Costa Rican regulations applicable to the subject, covering issues such as condominium property, the free trade zone regime, and

construction and access to telecommunications infrastructure. It also considered the relevant technical foundations for the analysis given the particularities of these types of properties. The document specifies the methodology used and the main results of the study.

32. Subsequently, the "***Market Study on Duct Infrastructure and Its Impact on Market Competition"*** was conducted and published in 2023. Its main objective was to analyze the market for duct infrastructure as a facilitating element for telecommunications companies' operations and to assess its impact on competition in Costa Rica's telecommunications sector, specifically in terms of entry barriers to deploying and sharing that resource, possible solutions to overcome such barriers, and measures that could be adopted to deepen competition nationwide.

33. Although the study initially focused on the telecommunications duct market, its analytical scope was expanded to include the situation of poles, towers, and data transmission through fiber-optic networks (especially last-mile connections), since these resources can substitute for duct infrastructure and are critical when there are difficulties or restrictions in building or accessing existing ducts owned by third parties.

34. The document first examines the regulatory framework for telecommunications operations in Costa Rica, followed by a general description of the sector and the technical elements necessary to understand the role of ducts in telecommunications operations. The second section summarizes the existing duct infrastructure in Costa Rica, presents the main findings from interviews conducted with operators and other related entities, and identifies potential risks to competition and barriers to infrastructure deployment. The third section describes international experiences in duct sharing. Finally, a set of recommendations is proposed, in line with the provisions of Law No. 9736, to meet the objectives of the study.

35. In 2024, SUTEL published the **"*Market Study on the Municipal Regime and Its Impact on the Deployment of Infrastructure for 5G Networks"***, aimed at identifying barriers that could hinder the deployment of telecommunications infrastructure at the local level, limiting or preventing the entry of new actors and the growth of existing ones. The study also sought to develop tools to promote 5G service deployment at the municipal level, encouraging competition and investment incentives.

36. First, the study reviewed Costa Rican regulations related to telecommunications infrastructure deployment, conducting a detailed survey of the characteristics of municipal regulations guiding such deployments. It also collected international and best-practice standards regarding the deployment of active and passive infrastructure for 5G networks, considering both mobile and fixed wireless telecommunications services.

37. The review of municipal regulations, compared with best practices, helped identify potential barriers in local ordinances. A comparative index among municipalities was developed to visualize which ones had the strictest rules that could translate into barriers. Given the relevance of infrastructure sharing in this context, an indicator was also built to identify municipalities favorable to such sharing.

38. The study then analyzed local markets to assess existing infrastructure, operator presence, and concentration and competition indicators. Finally, it analyzed the potential impact of identified municipal regulation barriers to propose recommendations for promoting new 5G deployments and market competition.

39. It is worth noting that all these market studies are available for public consultation on SUTEL's website[1].

[1] Available at: Estudios de Mercado | SUTEL: Superintendencia de Telecomunicaciones

3.2. Implemented Methodological Aspects

40. To carry out these market studies, the institution used multiple methodological tools. For the 2018 **market study on telecommunications infrastructure in residential condominiums**, the "*Perception and Satisfaction Survey on the Quality of Telecommunications Services"* conducted by the General Directorate of Quality (DGC) included specific questions about the availability of telecommunications services to end users living in horizontal and vertical condominiums, apartment buildings, and gated communities in selected cantons, which provided inputs for the analysis.

41. The study on **telecommunications infrastructure in business condominiums** used two main sources of information: first, field visits to business condominiums and commercial buildings with common installations for network deployment[2]; and second, information obtained from telecommunications operators[3].

42. To collect relevant information, SUTEL contacted the Costa Rican Free Trade Zone Association (AZOFRAS), the Costa Rican Foreign Trade Promotion Agency (PROCOMER), and the Federated College of Engineers and Architects of Costa Rica (CFIA). Telecommunications operators were also consulted about properties that, to their knowledge, had experienced or were experiencing access problems; this information was collected through a questionnaire. In addition, SUTEL conducted a general consultation with the regulated telecommunications sector, comprising all network operators and telecommunications service providers authorized by SUTEL, via a questionnaire aimed at obtaining both qualitative and quantitative data relevant to the study.

43. The **market study focusing on duct infrastructure** relied on various data sources, including market indicators and other data published by SUTEL, interviews with telecommunications operators, information provided by operators in response to SUTEL's requests, and data on municipal regulations collected by the Commission for the promotion and deployment of telecommunications infrastructure.

44. Finally, the ***Market Study on the Municipal Regime and Its Impact on the Deployment of Infrastructure for 5G Networks*** was based on a technical assessment of existing municipal regulations, identifying and analyzing 19 evaluation indicators that helped characterize the regulatory landscape of municipalities regarding the installation and expansion of telecommunications infrastructure. These indicators allowed SUTEL to determine the degree of regulatory heterogeneity and to identify municipalities with the greatest restrictions on deployment. A systematic comparison of infrastructure-sharing conditions was also conducted, resulting in an indicator to identify the most pro-competitive regulations. Additionally, potential correlations between municipal regulation characteristics and infrastructure development levels were analyzed, and survey data from companies in the sector were incorporated.

3.3. Main Findings of the Market Studies Conducted

45. Based on the market studies carried out, a series of relevant results and conclusions were obtained to characterize the state of telecommunications infrastructure in Costa Rica and its relationship with market competition.

[2] A total of 13 companies that manage this type of property took part in the study.

[3] There were 23 participating companies.

46. Regarding **infrastructure in residential condominiums**, it was determined that, given the nature of condominium ownership, the availability of fixed telecommunications service offerings depends on the effective access of service operators to the common property.

47. Furthermore, it was found that, in horizontal and vertical condominiums, apartment buildings, and gated residential communities located in the Central Planning Region, there are single telecommunications providers offering fixed telephony, pay television, and fixed internet services. The main barriers identified for the entry of operators and telecommunications service providers into these types of properties are related to construction, aesthetics, poor deployment practices, infrastructure saturation, exclusivity, and insufficient demand.

48. With respect to limitations stemming from insufficient demand or infrastructure saturation (when networks are adequately deployed), these cannot be addressed through regulatory instruments. However, limitations arising from aesthetic criteria, poor deployment practices, exclusivity clauses, or construction-related problems can be addressed through three strategic areas of action: education, the use of applicable regulatory frameworks, and the application of the competition regime.

49. The study also revealed a lack of knowledge among project developers, administrators, and owners regarding competition and its benefits for consumers, as well as a lack of awareness among end users of telecommunications services about their own rights to freely choose and switch service providers.

50. In Costa Rica, various institutions have issued a series of regulatory norms expected to help address some of the identified barriers, especially concerning the development of future constructions, which will need to comply with the most recent regulations. However, the scope of such norms is limited when dealing with already-built structures that lack the infrastructure needed for network deployment by multiple telecommunications operators, since overcoming that situation would require modifications to shared civil works.

51. Regarding **the market study on telecommunications infrastructure in business condominiums**, it was determined that, under the special property regimes analyzed, business clients must comply with a series of mandatory rules, such as obtaining administrative authorization for their service providers to access the property, given that these providers must use common infrastructure built within the premises.

52. Based on the sample of properties visited, it was concluded that 62% of the analyzed infrastructure is owned by the property, 15% has been donated to a telecommunications network operator, and in 23% of the cases, both situations coexist. Additionally, in 31% of cases, charges are applied for the use of the property’s own infrastructure.

53. Service providers identified the main difficulties in accessing this type of property as follows: - Insufficient dimensions or lack of ductwork leading to the end customer and lack of telecommunications rooms. - Insufficient or non-existent documentation of existing infrastructure. - Poor condition or saturation of infrastructure due to poor deployment practices. - Saturation caused by the number of existing networks. - Difficulties in obtaining permits to use infrastructure and deploy networks.

54. When barriers originate from technical construction aspects, infrastructure dimensions, or the condition of existing network deployments, the range of possible solutions includes expanding the capacity or coverage of existing infrastructure or adopting a new operational paradigm based on a shared network model. Under such a model, multiple service providers can gain simultaneous access through the application of the

telecommunications networks' access and interconnection regime, an equally valid alternative in scenarios where space saturation results from high network density.

55. In contrast, when entry barriers originate from unreasonable or unjustified restrictions imposed by an individual or a group with decision-making authority, the most appropriate solution lies in applying the existing legal instruments that address such situations, both from the regulatory perspective and under competition law.

56. The evidence collected indicates that, in all properties visited, there is a variety of service provider options; on average, each property hosts five providers. No situations were found suggesting entry blockage, nor was there evidence of exclusivity agreements.

57. Therefore, it was generally concluded that this study does not identify competition problems that would prevent the market from functioning properly. In that sense, as the competitive process appears to be working well and the situations identified that could affect market access are not related to competition itself, no anticompetitive issues were found.

58. The **market study related to duct infrastructure** found that there are significant barriers to accessing telecommunications infrastructure, both due to the refusal of infrastructure-owning companies to share it and the lengthy timeframes in which such sharing materializes. Additionally, some companies have submitted requests to SUTEL to resolve infrastructure access disputes, but according to them, the corresponding procedure is not an expedited mechanism given the time it takes to reach resolutions, which ultimately delays the projects of new entrants. To this, companies also added that they perceive differences in how municipalities treat operators when processing the required permits.

59. Some operators indicated that they face regulatory or legal obstacles (or a lack of specific regulations), both at the national and municipal levels, when installing support infrastructure such as poles, ducts, or towers. Consequently, deployment timelines can range from one to five years, which is a significant issue for them.

60. Based on the information gathered and analyzed throughout the study, especially from interviews with operators, the following entry barriers were identified in the duct infrastructure market in Costa Rica:

- The lack of ducts and the difficulties in accessing them or their close substitutes.
- The lack of standardization in municipal rules and authorizations for installing ducts and poles on public roads.
- The complexity of certain ministerial norms and authorizations required for installing ducts and poles on public roads under the responsibility of the Ministry of Public Works and Transport (MOPT).
- The lack of information on existing passive duct infrastructure in the country (while such information does exist for poles).
- The lack of municipal regulations that account for fiber-optic installations based on micro-trenching.
- The lack of a legal framework governing the implementation of multi-duct systems in free-trade zones, condominiums, shopping centers, and new industrial parks, which would facilitate competition in access to such facilities rather than hinder it.
- The lack of expedited mechanisms for resolving conflicts over access to essential resources already contemplated in Costa Rican law.

61. Finally, the “***Market Study on the Municipal Regime and Its Impact on the Deployment of Infrastructure for 5G Networks”*** highlighted, among its main findings, that some companies mentioned the absence of infrastructure sharing due to a lack of promotion and clear rules from SUTEL. It also identified as an additional challenge the difficulty of obtaining permits to use the aerial and underground infrastructure of the Costa Rican Electricity Institute (ICE). Furthermore, it was noted that, in cases where infrastructure sharing does occur, there is a risk of infrastructure saturation and inadequate compensation for operators.

62. The study also warned that municipalities do not promote the use of co-location services nor encourage planning, deployment, or urban design efforts for the placement of structures. This has led to saturated deployments, which in turn have a strong environmental and visual impact.

63. The evaluation of operators’ competitive performance in terms of radio base station sites at the cantonal level shows significant variability: Claro CR Telecomunicaciones S.A. (CLARO) has the highest number of sites in 31 of the 82 cantons, Liberty Telecomunicaciones de Costa Rica LY S.A. (LIBERTY) in 24, and ICE in 22, while in the remaining cantons, more than one operator shares the lead. Moreover, only in one-third of the cantons does the leading operator in radio base stations exceed the dominance threshold, and the leading operator varies across cantons (ICE in 10, LIBERTY in 9, and CLARO in 8). In the case of the radio base station site ownership market, the analysis across all cantons did not reveal any signs of concern from a competition policy perspective.

64. Additionally, there are six major infrastructure-owning companies that collectively hold 80% of radio base station sites. However, none of these companies individually owns more than 25% of the sites nationwide, and all are present in nearly all cantons. There are also another 57 small companies distributed throughout the country.

65. On the other hand, comparing information on existing municipal infrastructure with corresponding local regulations does not reveal any correlation between regulatory characteristics and the level of infrastructure deployment. This finding aligns with the conclusion that the main barrier to deployment is economic, namely, the need to assess business plans that allow for capital cost recovery and manage investment risk.

66. The study identified several restrictions on telecommunications infrastructure deployment contained in municipal regulations. Some of these restrictions are justified from a technical perspective (for example, safety or health reasons). However, certain deviations from minimum standards and, in some cases, from international best practices were also identified, for which it is difficult to find exclusively technical justifications, suggesting that there is room for improvement.

67. Likewise, a significant portion of complaints reported in the survey of operators and infrastructure companies related to delays and discretion in municipal response times. The current regulations do not establish binding maximum time limits for responses or for resolving authorization requests for telecommunications infrastructure construction. As a result, procedures may be prolonged and vary widely among municipalities.

68. The study also identified and analyzed certain regulatory elements that maintain asymmetries in favor of Costa Rica’s incumbent operator. These asymmetries could discourage deployment by new entrants and become anticompetitive barriers. Indeed, some operators responding to the survey perceive preferential treatment for ICE by municipalities. Factors that could contribute to such asymmetries include the incumbent’s control over 5G spectrum bands, the special expropriation regime, direct contracting between public administrations, and other asymmetries such as obtaining permits to use ICE’s aerial and underground infrastructure by third parties.

3.4. Recommendations from the Market Studies Conducted

69. In addition to presenting the main results of the studies, each included a series of recommendations aimed at addressing and improving telecommunications infrastructure conditions according to the issues analyzed. Below are several of them, mainly focused on advocacy and research tasks carried out by SUTEL as the sectoral competition authority:

- Provide competition-related training to developers, builders, and administrators of horizontal and vertical condominiums, apartment buildings, and gated communities, to prevent them from establishing or encouraging unjustified restrictions on the entry of telecommunications operators.
- Assess the feasibility of preparing and publishing a construction-level best practices guide aimed at developers of horizontal and vertical condominiums, apartment buildings, and gated communities.
- Assess the feasibility of preparing and publishing an administrative-level best practices guide aimed at administrators of horizontal and vertical condominiums, apartment buildings, and gated communities[4].
- Initiate investigations to determine possible violations of telecommunications law related to the alleged existence of exclusivity agreements by certain telecommunications operators.
- Conduct training workshops on best practices for deploying telecommunications networks within properties that have shared infrastructure.
- Develop, publish, and disseminate informational documents that, without having regulatory force, promote good practices for the deployment of telecommunications networks within properties with shared infrastructure[5].
- All of the above recommendations were implemented by SUTEL itself.
- Likewise, the various studies established recommendations at the regulatory level and others directed to public institutions to improve conditions for access to telecommunications infrastructure, such as:
- Conduct studies to determine the relevance of establishing obligations to unbundle access elements of public telecommunications networks, particularly regarding the fiber-optic subscriber loop.
- Promote the adoption of municipal regulations facilitating fiber-optic deployment using micro-trenching.
- Simplify, make transparent, and standardize the restrictions established by municipal regulations.

---

[4] See in this regard the Guide of Good Practices for the Management of Shared Residential Telecommunications Network Infrastructure, published at: https://sutel.go.cr/sites/default/files/guia_buenas_practicas_gestion_infraestructura_residencial_compartida_de_redes_de_telecomunicaciones_0.pdf

[5] This has been done through the “Best Practices for the Deployment of Telecommunications Networks in Business and Commercial Buildings with Shared Infrastructure,” published at: https://sutel.go.cr/sites/default/files/lineamientos_para_el_despliegue_de_redes_de_infraestructura_de_uso_comun_vf.pdf

- Promote actions before the competent authority to publish the regulation mandated by the Law to incentivize and promote the construction of telecommunications infrastructure in Costa Rica (Law No. 10216), ensuring that such regulation establishes clear procedural timelines, including maximum response periods for infrastructure deployment authorization requests, applying the principle of "positive silence" to achieve greater efficiency and uniformity in municipal procedures.
- Establish infrastructure-sharing regulations that comply with the principles of open and non-discriminatory third-party access and eliminate any norms or procedures granting preferences or advantages to the incumbent operator.
- Establish cooperation mechanisms with other regulators to promote the creation of cross-sector infrastructure-sharing frameworks (electricity, water, drainage, gas, telecommunications, etc.) for the use of poles, ducts, cables, aqueducts, and high-voltage towers.
- Identify all national and municipal entities involved in granting permits or authorizations for infrastructure deployment, whether for new installations, maintenance, or upgrades, in order to incorporate harmonized processes in terms of time, procedures, and costs through a unified public service window.
- Prepare technical guidelines specifying standards for the deployment of cells of different sizes and make them available to municipal authorities responsible for granting permits or authorizations for 5G network deployment.

70. Many of these recommendations have already been implemented by the Executive Branch, through the Ministry of Science, Innovation, Technology and Telecommunications (MICITT) and the Commission for the promotion and deployment of telecommunications infrastructure.

4. Interagency coordination and international cooperation

71. COPROCOM and SUTEL maintain constant coordination on competition matters at both the domestic and international levels. Although each authority has so far carried out its market studies independently, they have sought to keep their methodologies aligned and to share technical lessons, especially when defining objectives, analytical approaches and dissemination strategies.

72. On the international front, both agencies are active in multilateral fora such as the OECD, the Inter-American Development Bank (IDB), the Central American Competition Network (RECAC) and the Central American Competition Committee (CCC). These venues allow them to exchange experiences on market study methodologies and sector-specific competition policies.

73. In several COPROCOM studies, counterpart competition and regulatory authorities abroad were consulted to obtain insights from similar markets. This exchange has been key to contextualizing domestic findings, strengthening the technical basis of recommendations and aligning analytical approaches with international best practices. The information gathered has enriched the analysis and led to more precise, locally applicable proposals.

74. The main benefits of this cooperation are stronger technical capacity, gradual harmonization of methodological approaches and access to comparable data on key sectors such as professional services, pharmaceuticals and other regulated markets. The main

challenges are related to resource constraints, limited availability of consistent data and the absence of formal bilateral cooperation mechanisms specifically for market studies.

75. Nevertheless, both authorities continue to promote a collaborative, mutual-learning approach, using regional and international competition networks as platforms to increase the technical quality and impact of Costa Rica's market studies.

5. Outlook

76. COPROCOM and SUTEL face the challenge of extending the use of market studies to digital platforms, public utilities and new industrial organization models. While Costa Rica still lacks powers to impose structural remedies through market investigations, the recommendations derived from studies already exert significant influence on policy design and institutional reform.

6. Conclusions

77. Market studies have helped lower identified competition barriers in several sectors, strengthened regulatory governance and improved inter-agency coordination, thereby fostering a more competitive environment. They have become a cornerstone for promoting competition, enhancing institutional advocacy and boosting economic efficiency in Costa Rica. The joint experience of COPROCOM and SUTEL reflects a sustained commitment to international best practices and to the methodological standards promoted by the OECD.

78. In line with the OECD's advocacy of preventive competition policy, it is useful to reinforce the economic dimension of market studies by briefly noting their expected direct and indirect effects. Direct effects include lower entry barriers, reduced transaction costs and higher consumer welfare. Indirect effects embrace stronger innovation incentives, improved productive efficiency and the reallocation of resources toward more dynamic sectors, especially in traditionally rigid markets such as sugar, pharmaceuticals and transport.

79. Market studies have thus consolidated their position as a preventive, strategic instrument in the competition policy toolkit, aimed at identifying institutional coordination failures and maximizing the network effects of advocacy. This approach mirrors the legislature's vision when it introduced the tool in Law No. 9736: a mechanism to anticipate distortions and guide evidence-based economic policy decisions.

80. Moreover, given the increased market digitalization, COPROCOM and SUTEL need to deepen regulatory convergence. International best practices are moving toward joint market inquiries between competition authorities and sector regulators. Costa Rica could progressively adopt such coordination schemes, creating an integrated, forward-looking vision of regulation and competition in digital environments. This would enhance the coherence of national public policies and position the country as a regional benchmark for OECD-driven best practices.