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Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN COSTA RICA**

-- 2013 --

**17-18 December 2014**

*This report is submitted by Costa Rica to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 December 2014.*

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## EXECUTIVE SUMMARY

### 1. Changes to competition laws and policies, proposed or adopted

#### 1.1 *Summary of new legal provisions of competition law and related legislation*

1. With the 2012 reform, introduced by Law 9072, substantially change the rules governing competition policy in Costa Rica. The main thrust of the amendment, which was mainly a result of an intensive advocacy effort by COPROCOM, was to provide COPROCOM with investigative powers, such as the faculty to conduct dawn raids; the possibility for economic agents to require the early termination of an investigation for anticompetitive practices; and the establishment of a merger notification regime with rules governing its process.

2. Before the 2012 amendment to Law 7472, Costa Rica not only lacked an ex ante merger control regime, but also the few rules governing mergers were clearly insufficient to prevent or effectively cope with anticompetitive transactions. In fact, in just a couple of paragraphs, Article 16 of the Law barely provided a merger definition; prohibited those mergers whose objective or effect is to reduce, distort or hinder competition; and established that during the investigation of prohibited mergers, the criteria for determining market power and defining relevant market had to be the ones used for the investigation of relative monopolistic practices.

3. The 2012 amendment introduced a significant improvement to rules governing merger control in Costa Rica. First, Article 16 now provides a more robust definition of what is considered a merger: “the merger, acquisition and sale of a business establishment, or any other act or contract that merge companies, associations, shares, capital stock, trusts, management or other assets in general executed between competitors, clients, providers or other economic agents that have been independent among them and that result in the acquisition of economic control by one of them or the formation of a new economic agent under the joint control by two or more competitors”. In addition, without including any type of presumptive rules (e.g. market share thresholds, per se treatment, etc.), the amendment also established that mergers are transactions by means of which a person, public or private, acquires control over two or more economic agents, actually or potentially independent among them, or that participate in different levels of the supply chain of goods and services.

4. Finally, one of the most significant change the status quo introduced by the 2012 reform was probably the new rules for notifying mergers. Article 16bis establishes that from April 2013, the parties to a merger falling within certain thresholds have the legal obligation to notify the merger to the Commission before it takes place or within five business days of its execution

5. According to the new rules, the thresholds for mergers that fall within the notification obligation are as follows:

6. The total value of the productive assets of all the undertakings involved in the transaction, including their headquarters, exceeds 30,000 minimum monthly wages (approximately USD 14,550,000). This also applies to successive transactions executed within a period of two years that, in total, exceeds the aforementioned amount; or

7. The total revenues generated by all economic agents involved within the national territory exceed 30,000 minimum monthly wages (approximately USD 14,550,000).

### ***1.1 Other relevant measures, including new guidelines***

8. With the approval of the reform 2012 a number of changes in relation to prior notification of mergers were introduced, in addition to providing other guidelines for the implementation of the early termination of the proceedings, judicial inspections and the extension of powers of the Commission and changes in relation to fines. The Costa Rica Agency developed a guide that aims to provide guidance to economic agents with the general guidelines for analyzing mergers.

### ***1.2 Government proposals for new legislation***

9. Currently, the government has a draft reform of the law No. 7472 but not yet started its discussion.

## **2. Enforcement of competition laws and policies**

### ***2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions***

10. Also during 2013 this agency has been working in advocacy of competition to prevent anticompetitive practices, agreements or conducts that may affect the market. For this, COPROCOM has conducted workshops with the participation of economic agents, firms, suppliers etc. It has opened some investigations involving this type of anticompetitive practices.

11. The Commission was concerned to train judges who review our cases. They went to Panama and the United States through the cooperation of the Competition Regional Center for Latin American, to get specialized in competition topics.

#### ***2.1.1 Summary of activities***

12. Competition authorities and Courts: During the last year, we had some processes that are under review by the judicial authorities, but with resolution of confidentiality that's why it cannot be indicated. On the other hand, cases relating to pension funds, appliances and parking remain under appeal courts.

#### ***2.1.2 Description of significant cases, including those with international implications.***

13. These are some of the known cases COPROCOM without international implications but very important:

1. Mergers: Among COPROCOM's decisions under the new merger regime, probably the most prominent one involved the acquisition Punto Rojo S.A. by Colgate-Palmolive (Central America) Inc. The former is a local manufacturer and dealer of personal hygiene products, clothing and home products; whereas the second is an American multinational manufacturer and distributor of personal hygiene products and other home cleaning products. For this transaction, COPROCOM established that the merger would have impact on the following relevant product markets in Costa Rica: (i) soap: antibacterial, cosmetic and baby (bars and liquid soap), (ii) shower gel (iii) dishwashing soap (cream and liquid), and (iv) fabric softeners. COPROCOM's analysis revealed that, in the dishwashing soap market, the share of both merging parties was small and therefore the transaction posed no competition concerns. There were other markets, meanwhile, where, although Colgate had a high market share (i.e. fabric softener 80%-90%, shower gel 50%-60),

Punto Rojo's participation in the market was unimportant. In these markets the Agency concluded that the transaction posed no threat to competition, since the merger would not affect significantly Colgate's already high market power. In the antibacterial soap market, finally, Punto Rojo had a significant share of the market and Colgate was a close competitor. In this market, the Agency concluded that, although Punto Rojo and Colgate's joint market participation would increase substantially and there were high barriers to entry (such as the presence of well-established brands), actual and potential competitors had the means and incentives to increase their presence. In the light of these conclusions, the transaction was finally cleared, without any remedial action.

2. Unilateral Conduct: Car spare parts: In 2008 the National Institute of Insurance (INS) launched a web page to trade car spare parts through a private bidding program where car importers, car distributors and car spare part suppliers could interact. Its objective was to obtain the best supply conditions from car spare part suppliers. However, the largest car distributors and importers, through the Car Manufacture Association (AIVEMA), reacted to this initiative by conditioning their participation in the scheme on the imposition of restrictive and exclusionary conditions on the functioning of the bidding process. These conditions included: (i) fixing test periods so that AIVEMA's affiliates could pre-try the system without any obligation; (ii) AIVEMA's affiliates would exclusively sell to the INS all car spare parts for new cars (i.e. cars of less than 5 years); (iii) AIVEMA's affiliates would grant a 15% discount to the INS before the final price; (iv) AIVEMA imposed a certain date for the program to start working; and (v) all of AIVEMA's affiliates would have to be registered as authorised suppliers. This conduct was reported to COPROCOM by other spare part competitors not affiliated to AIVEMA, who argued that the conditions, requirements and conducts displayed by AIVEMA's affiliates directly affected the process of competition and car spare part competitors. COPROCOM found evidence of a boycott, since minutes of meetings within AIVEMA showed that its affiliates agreed not to support INS's program, given that it promoted the purchase of spare parts not recommended by manufacturers. In 2013, COPROCOM found that AIVEMA's affiliates were in a joint dominant position and that they used such power to put pressure on the INS to accept the Association's conditions, hence forcing competitors not affiliated to AIVEMA out of the car spare part market. COPROCOM fined AIVEMA's officials, affiliates and individuals that directly participated in the conduct with amounts that went from USD 5,158 to 211,494 per undertaking.

## **2.2 Mergers and acquisitions**

### *2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws;*

14. Before the 2012 amendment to Law 7472, Costa Rica not only lacked an ex ante merger control regime, but also the few rules governing mergers were clearly insufficient to prevent or effectively cope with anticompetitive transactions.

15. The 2012 amendment introduced a significant improvement to rules governing merger control in Costa Rica. Article 16bis establishes that from April 2013, the parties to a merger falling within certain thresholds have the legal obligation to notify the merger to the Commission before it takes place or within five business days of its execution.

## Merger from April 2013 to Julio 2014

N°	N° RESOLUTION	ENTERPRISES	RESOLUTION DATE	NOTIFICATION DATE	TYPE OF MERGER
1	10-2013	SIGMA ALIMENTOS - MONTEVERDE	28/05/2013	03/04/2013	Horizontal
2	11-2013	DMS-ARCHIVOS BEECHE	28/05/2013	22/04/2013	Horizontal
3	12-2013	EL LAGAR-ASHLAND FINANCIAL	18/06/2013	08/05/2013	Horizontal
4	13-2013	ALMACENES EL COLONO-AGRICULTORE ADVISORY	18/06/2013	08/05/2013	Conglomerate
5	22-2013	INCESA STANDARD-CORONA	13/08/2014	07/05/2014	Horizontal
6	23-2013	CENTENNIAL TOWERS-LAS TORRES DCR	08/10/2013	09/08/2013	Horizontal
7	32-2013	COLGATE PALMOLIVE-PUNTO ROJO	10/12/2013	22/08/2013	Horizontal
8	01-2014	UNOPETROL-SERVICENTRO LIMON Y OTRAS	28/01/2014	18/12/2013	Horizontal
9	04-2014	ARCELOR MITTAL-BEKAERT	04/03/2014	16/12/2013	Vertical
10	05-2014	DMS-METROARCHIVOS	11/03/2014	28/01/2014	Horizontal
11	07-2014	SIGMA ALIMENTOS-SAVI SAN JOSE Y OTRO	20/05/2014	08/03/2014	Conglomerate
12	12-2014	SYSCO-MAYCA	10/06/2014	19/05/2014	Horizontal
13	13-2014	ROMA PRINCE-LUCEMA	24/06/2014	21/04/2014	Horizontal
14	14-2014	CENTRO DE LUBRICACIÓN PARA SUPERMERCADOS-SUPERSERVICIO S.A.	24/06/2014	03/06/2014	Horizontal
15	18-2014	HAPAG LLOYD-CSAV AGENCY	10/07/2014	25/04/2014	Horizontal
16	19-2014	UNOPETROL-PROPIEDADES BENIDORM Y OTRAS	10/07/2014	13/06/2014	Horizontal
17	23-2014	INMOBILIARIA SAN RAFAEL-HOTEL INDIGO	29/07/2014	27/06/2014	Horizontal
18	24-2014	CHIQUITA BRANDS Y FYFFES	05/08/2014	19/06/2014	Horizontal
19	30-2014	PELMONT INVESTMENTS Y RIVARA HOLDING	26/08/2014	22/07/2014	Conglomerate
20	31-2014	STANDARD FRUIT Y CÍA AGRÍCOLA	26/08/2014	24/07/2014	Horizontal

### 2.2.2 *Summary of significant cases.*

16. Relevant merger case started in 2007 as a result of the acquisition of several companies belonging to Grupo Atlas by Electrodomésticos Mabea, S.A.<sup>1</sup>. In its investigation, COPROCOM established that by means of the transaction, Mabea would increase its market share to 90% in the kitchen ovens market and 72% in the refrigerators market. Since barriers to entry in both markets were significant, the Agency ruled that the transaction resulted in a substantial lessening of competition in both markets and, hence, that the merger represented an infringement to the Law. Moreover, since COPROCOM determined that Mabea's conduct was particularly severe, a USD 2,317,561 fine (equivalent to 10% of Mabea's annual sales) was imposed on the company. Finally, with the aim of avoiding further harm to competition, COPROCOM imposed on Mabea the following measures: (i) refrain from representing or distributing potential competitors' kitchen ovens or refrigerators; (ii) report any merger intention or transaction that could possibly cause vertical or horizontal anticompetitive effects; (iii) avoid any vertical and horizontal restrictions to competition; and (iv) regularly report market information for the two products.

17. Since the implementation in April 2013, of the 2012 amendment to the merger control provisions, and until July 2014 when this draft was completed, only sixteen mergers were notified to COPROCOM, out of which twelve were approved with no conditions and, by the time this report was crafted, four were under review.

18. Among COPROCOM's decisions under the new merger regime, probably the most prominent one involved the acquisition *Punto Rojo S.A. by Colgate-Palmolive* (Central America) Inc. The former is a local manufacturer and dealer of personal hygiene products, clothing and home products; whereas the second is an American multinational manufacturer and distributor of personal hygiene products and other home cleaning products.

19. For this transaction, COPROCOM established that the merger would have impact on the following relevant product markets in Costa Rica: (i) soap: antibacterial, cosmetic and baby (bars and liquid soap), (ii) shower gel (iii) dishwashing soap (cream and liquid), and (iv) fabric softeners. COPROCOM's analysis revealed that, in the dishwashing soap market, the share of both merging parties was small and therefore the transaction posed no competition concerns. There were other markets, meanwhile, where, although Colgate had a high market share (i.e. fabric softener 80%-90%, shower gel 50%-60), Punto Rojo's participation in the market was unimportant. In these markets the Agency concluded that the transaction posed no threat to competition, since the merger would not affect significantly Colgate's already high market power. In the antibacterial soap market, finally, Punto Rojo had a significant share of the market and Colgate was a close competitor. In this market, the Agency concluded that, although Punto Rojo and Colgate's joint market participation would increase substantially and there were high barriers to entry (such as the presence of well-established brands), actual and potential competitors had the means and incentives to increase their presence. In the light of these conclusions, the transaction was finally cleared, without any remedial action.

### **3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

20. The Law explicitly vests COPROCOM with the authority to engage in certain forms of competition policies. Article 1 of Law 7472 establishes that its general objective is to promote competition and access to free market. Article 27 further empowers COPROCOM to determine the co-ordination mechanisms to penalise and prevent anticompetitive practices; to publish its studies, opinions and

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<sup>1</sup> Grupo Atlas is a Costa Rican company whereas Electrodomésticos Mabea, S.A. is the Costa Rican subsidiary of Controladora Mabe, S.A. de C.V., a Mexican Holding with worldwide businesses.

decisions. Additionally, subsection f) grants COPROCOM the faculty to issue, on its own initiative, non-binding opinions addressing questions of competition policy with respect to laws, regulations, agreements, and other governmental acts.

21. COPROCOM emit opinions involved markets and sectors within the scope of Law 7472, and regulations with potential adverse effects on competition.

22. COPROCOM has been fairly active as a consultant to the government and to some sector regulatory agencies concerning legislation and regulations that implicate competition policy or avoid the adoption of anticompetitive regulations.

23. Regulatory authorities in the financial and telecommunications sectors are prone to acknowledge COPROCOM's expertise and, therefore, tend to follow its recommendations.

24. Also, through the various free trade agreements signed by Costa Rica, have managed to incorporate provisions on competition policy. Like Canada, CARICOM, Chile, Panama, Peru, Singapore and the European Union, which incorporate an article on cooperation which has as main objective the exchange of information.

#### **4. Resources of competition authorities<sup>1</sup>**

##### **4.1 Resources overall (current numbers and change over previous year):**

###### **4.1.1 Annual budget (in your currency and USD):**

Year	Budget <sup>2</sup>
2013	¢ 349.000.000 (Aprox. \$695.000)
2012	¢ 324.952.691 (Aprox. \$650.000)
2011	¢ 312.876.420 (Aprox. \$625.000)

###### **4.1.2 Number of employees (person-years):**

- economists;
- lawyers;
- other professionals;
- support staff;
- all staff combined.

<sup>2</sup> COPROCOM counts with additional resources from MEIC's budget to pay for the lease of its offices and related bills (e.g. electricity, water, private security, etc.). Such payments are not included in COPROCOM's annual budget.

Period 2012-2014	Number of employees	Members of Coprocom <sup>3</sup>
Economists	6	5
Lawyers	6	5
Other professionals	0	0
Support staff	3	0
All staff combined	15	10

**4.2 Human resources (person-years) applied to:**

- Enforcement against anticompetitive practices<sup>2</sup>;
- Merger review and enforcement;
- Advocacy efforts.

25. The Technical Support Unit (UTA) does not have separate human resources. It has two different departments: Procedures and Mergers and Prevention and Promotion; nevertheless, in a normal investigation or procedure and merger, the Executive Director make a team constitute with at least one lawyer and one economist, they work together on the case; however, in more complex cases, more professionals take part.

**4.3 Period covered by the above information:**

**5. Summaries of or references to new reports and studies on competition policy issues**

26. COPROCOM issued important opinions and recommendations about technical regulations, like:

- Drugs
- Drugs importation
- Steel rod

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<sup>3</sup> Commissioners do not work full-time, and they meet in regular weekly sessions for which they are paid for their attendance.