

Unclassified

DAF/COMP/AR(2015)34

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

20-Oct-2015

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2015)34
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN COSTA RICA

-- 2014 --

27-28 October 2015

This report is submitted by Costa Rica to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 October 2015.

JT03384475

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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

- COPROCOM

1. On the issue of legal reforms on competition, the situation remains the same as in 2013. With the reform implemented in 2012, the Commission powers were expanded, and the scope was strengthened through specific faculties such as increasing the investigative powers exercised by the figure of the raid with the permission of an administrative judge. Also, the early termination of investigations is authorized as an alternative to ensure the efficient and effective implementation of the competition laws, achieving that offenders comply with a detailed analysis of the conduct under investigation in more expeditious deadlines. Another new aspect of the reform is the implementation of prior notification of concentrations, which allows the Commission to carry out a more detailed analysis of mergers and acquisitions in order to avoid possible negative effects on market structures.

2. Currently with the beginning of the accession process of Costa Rica to the OECD, there is a plurality of recommendations that are under study. Many of these promote changes to be done at the legislative level in order to integrate the international best practices. Considering this is an important change that incorporates various agencies according to the characteristics of each sector, it requires the assessment and integration of other sectors in order to achieve better actions to protect the competitive process.

3. It should be noted that in 2014 a peer review of national competition law and policies was conducted. It involved the review of policies and laws that the country uses to prevent monopolies and behaviors that can obstruct competition.

4. In this peer-review, a series of recommendations were made to the Commission for the Promotion of Competition in regards to its functions, powers, integration and scope, based on the international best practices of the OECD and the experience of other competition authorities. Nonetheless, most of the recommendations made will take legal reforms and therefore a special study for future implementation is needed.

5. It is important to note that the recommendations from the peer-review shall endow the Commission of more and better tools.

- SUTEL

6. No new legal provisions of competition law and related legislation to report.

1.2 Other relevant measures, including new guidelines

- COPROCOM

7. The results of the analysis inter-peers made in 2014 was categorized as an important tool applied by the OECD, and whose results are reflected in the strengths or weaknesses that could face a Competition Authority in the exercise of their functions, culminating in a critical approach to the competition policy and the performance of the Authority in the application of antitrust laws and the work of prevention and protection of competition procedures.

The results of the OECD Peer Review of the Costa Rica Competition Law and policies was officially launched in San José during the 20th anniversary ceremony of Costa Rica's Competition Law.

- SUTEL

8. In 2014, the SUTEL started working in guidelines for the Analysis of Anticompetitive Practices and for the Analysis of Mergers in the Telecommunications Sector

1.3 Government proposals for new legislation

- COPROCOM

9. A proposal to modify the Competition Law No. 7472 is under study along with the recommendations made by the OECD

- SUTEL

10. There was no government proposals for new legislation for the telecommunications sector. The SUTEL was part in the OECD project on the use of market studies by the competition authorities of Chile, Colombia, México, Panama and Peru, where the legal framework of Costa Rica to conduct market studies was assessed.

2. Enforcement of Competition laws and policies

2.1 Actions against anticompetitive practices, including agreements and abuses of dominant positions

- COPROCOM

11. During the year 2014, it took place the celebration of the twentieth anniversary of enactment of the Law for the Promotion of Competition and Effective Consumer Protection, No. 7472. This celebration was instrumental in the promotion of a competition culture in the country. Various experts from the competition authorities from France, Chile and, Mexico as well from the OECD attended this activity.

12. This activity allowed integrating a wide audience that had the presence of representatives of the Legislative Assembly, the Judiciary, officials from the Central Government, institutions related to the issue of Competition, along with other areas of interest. In addition, the opportunity was taken to disclose associated topics of importance of competition and the reforms that had been achieved after many years in terms of efficiency in the implementation of Law No. 7472.

13. In addition, to discussing some issues concerning the accession process of Costa Rica to the OECD also the recommendations to be implemented in accordance with the best international practices were discussed. There are various actors and participants in these processes, however, a recurrent aspect is reflected in the importance of generating changes in competition law in order to ensure the realization of an efficient and accurate function of promote competition.

14. There is no doubt that the competition law requires modernization than allows Costa Rica's law to incorporate the best international practices, however, a detailed analysis of the existing competition policies requires the integration of the various actors associated with the law reformation process of the law.

2.1.1 *Summary of activities*

- COPROCOM

Competition authorities and Courts: The cases related to retirement funds markets, appliances, collusive tendering and credit cards are still under review by the Courts. We are waiting for the concrete decisions to be rendered.

- SUTEL

Competition authorities and Courts: There are no Court actions to report in the telecommunication sector in the year 2014.

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

- COPROCOM

15. We have some important cases without international implications:

1-Mergers: In 2014 various mergers were reviewed without these having international effects, however, were related to important sectors of the economy.

16. The cases that were analyzed were: the sale of the company *Incesa*, which manufactures sanitary ware, the transaction involved companies dedicated to steel production, food processing, retailing petrol stations, container transport service, along with another group of agents associated with the purchase of companies producing pineapple and oranges.

17. Other transactions studied were varied considering that once the prior merger notification was implemented the need to cover more sectors for study arose. During 2014 as a result of the implementation of the procedure of prior notification of mergers, the Commission reviewed a significant number of mergers and acquisitions.

2- Unilateral Conduct: Some unilateral conduct complaints were reviewed which ending up in the opening of an investigation against the National Insurance Institute (INS), who was the only insurance company in the country before the opening of the insurance market. Here we investigated whether the INS committed an abuse of dominant position conduct, specifically the one determined in paragraph g) current subsection k) Article 12 of the Law No. 7472: "(...) k) In general, any deliberate act that causes the exit of competitors from the market or prevent it's entry (...)".

18. In this investigation it was determined that the conduct displayed by the INS, was an abuse of its substantial market power, which was able to generate a conscious and deliberate exclusionary barrier to emerging competitors, specifically in the markets of Vehicle Insurance and Fire Insurance. The actions from the agent resulted in an exclusionary strategy derived from an institutional policy of discounts to distort the identified markets. It was proved this discriminatory policy of price discounts was repeated insistently, trying to improve any offer of the competitors as a way to prevent the migration of customers to new and incoming insurance companies or to capture new consumers. The above actions were considered abuses of the insurance entity based on the substantial power it holds.

- SUTEL

19. In the telecommunication sector, the following cases were concluded in the year 2014:

20. The first case was a complaint from an IP telephone services provider (*Callmyway NY S.A.*) against a mobile network operator (*Claro CR Telecomunicaciones S.A.*) for the increase in charges of termination of international long distance calls. The Council determine that the complaint was inadmissible since the elements given are insufficient to have shown that by increasing the termination charge in the international long distance market in relation to access and interconnection could be establish as an abuse of dominance (Decision No. RCS-053-2014)

21. The second case was an investigation of a cartel of three major cable operators (*Amnet Cable Costa Rica S.A., Televisora De Costa Rica S.A., Telecable Económico TVE S.A.*) for price fixing in the paid television market (cable TV, IPTV and satellite). The Council decided that there was insufficient elements to prove the cartel (Decision No. RCS-089-2014)

22. The final case was a complaint from an operator and provider of paid television (*Amnet Cable Costa Rica S.A.*) about a refusal to deal the access to an essential facility (*utility pole*), form its owner (*JASEC*). The Council decided that it was not relevant to open an investigation since there is a case in process under the access and interconnection regulation (Decision No. RCS-155-2014).

23. No significant cases with international implications to report in the telecommunications sector.

2.2 *Mergers and acquisitions*

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

- COPROCOM

24. As previously indicated, in the year 2014 an approximate of 25 merger notifications in various sectors were analyzed, of which only one was conditioned given the negative effects that could result from the transaction. It is important to note that the number of transactions notified is undoubtedly a result of the implementation of the Law No. 9072 that modify the Law No. 7472 in 2012, which established the formal procedure of prior merger notification.

25. The detail of the mergers analyzed under the General Competition law are detail in the box below.

Number of Mergers that were notified and reviewed during the year 2014

N°	N° VOTE	BUSINESSES INVOLVED	DATE OF RESOLUTION	DATE OF NOTIFICATION	DURATION NATURAL DAYS	TYPE OF OPERATION
1	01-2014	UNOPETROL-SERVICENTRO LIMON ET AL	01/28/2014	12/18/2013	41	HORIZONTAL
2	04-2014	ARCELOR MITTAL-BEKAERT	03/04/2014	12/16/2013	78	CONGLOMERATE
3	05-2014	DMS-METROARCHIVOS	03/11/2014	01/28/2014	42	HORIZONTAL
4	07-2014	SIGMA ALIMENTOS-SAVI SAN JOSE Y OTRO	05/20/2014	03/08/2014	73	HORIZONTAL
5	12-2014	SYSCO-MAYCA	06/10/2014	05/19/2014	22	HORIZONTAL

6	13-2014	ROMA PRINCE-LUCEMA	06/24/2014	04/21/2014	64	HORIZONTAL
7	14-2014	CENTRO DE LUBRICACIÓN PARA SUPERMERCADOS- SUPERSERVICIO S.A.	06/24/2014	06/03/2014	21	HORIZONTAL
8	18-2014	HAPAG LLOYD-CSAV AGENCY	07/10/2014	04/25/2014	76	
9	19-2014	UNOPETROL-PROPIEDADES BENIDORM Y OTRAS	07/10/2014	06/13/2014	27	HORIZONTAL
10	23-2014	INMOBILIARIA SAN RAFAEL- HOTEL INDIGO	07/29/2014	06/27/2014	32	HORIZONTAL
11	24-2014	CHIQUITA BRANDS Y FYFFES	08/05/2014	06/19/2014	47	HORIZONTAL
12	30-2014	PELMONT INVESTMENTS Y RIVARA HOLDING	08/26/2014	07/22/2014	35	HORIZONTAL
13	31-2014	STANDARD FRUIT Y CÍA AGRÍCOLA	08/26/2014	07/24/2014	33	HORIZONTAL
14	33-2014	GRUPO Q	09/23/2014	09/01/2014	22	HORIZONTAL
15	35-2014	YARA Y ABOCOL (*)	10/07/2014	01/24/2014	256	HORIZONTAL
16	36-2014	APL LOGISTICA Y APLL/ILG Logistics	10/14/2014	09/30/2014	14	
17	44-2014	AGROINDUSTRIAL PIÑAS DEL BOSQUE	10/28/2014	10/06/2014	22	HORIZONTAL
18	46-2014	HOLCIM Y COOPELESCA	11/04/2014	10/14/2014	21	CONGLOMERADO
19	47-2014	AGROINDUSTRIAL PIÑAS DEL BOSQUE	11/11/2014	10/23/2014	19	HORIZONTAL
20	48-2014	CITI TARJETAS Y GESTIONADORA DE COBROS	11/18/2014	10/20/2014	29	CONGLOMERATE
21	50-2014	CHIQUITA BRANDS Y CAVENDISH	11/19/2014	10/31/2014	19	HORIZONTAL
22	51-2014	GLOBAL SPICE Y LOS PATITOS	11/25/2014	10/03/2014	53	HORIZONTAL
23	52-2014	PRECISSION GLOBAL Y CREGANNA	11/25/2014	10/24/2014	32	CONGLOMERATE
24	53-2014	DIGEMA Y FA TRES	11/25/2014	10/21/2014	35	HORIZONTAL
25	57-2014	ABBOTT LABORATORIES- GYNOPHARM	12/16/2014	10/03/2014	74	HORIZONTAL Y CONGLOMERADO

(*) The operation was conditioned

- SUTEL

26. In the year 2014, the SUTEL review four mergers in the telecommunications market.

Number of Mergers that were notified and reviewed during the year 2014

N°	N° VOTE	BUSINESSES INVOLVED	DATE OF RESOLUTION	DATE OF NOTIFICATION	DURATION WORKING DAYS	TYPE OF OPERATION
1	RCS-015-2014	MULTICOM & CRISTAL ASESORES FORESTALES, COMUNICACIÓN ILMA, TORTIATLANTIC, JALOVA DE TORTUGUERO, QUANTUM COMUNICACIONES, PROYECTO ARIES	22/01/2014	23/12/2013	23	HORIZONTAL
2	RCS-017-2014	RACSA & VIRTUALIS S.A.	24/04/2014	15/01/2014	72	HORIZONTAL
3	RCS-077-2014	COLUMBUS NETWORK LTD & LAZUS COLOMBIA S.A.	30/04/2014	20/01/2014	73	VERTICAL
4	RCS-255-2014	RACSA & ICE	15/10/2014	27/08/2014	36	HORIZONTAL

2.2.2 *Summary of significant cases*

- COPROCOM

27. The only concentration that was conditioned during 2014 is detailed in the next paragraphs.

28. In January 2014 the notification for the merger of the company Yara International ASA who wants to purchase the company OFD Holding Inc., and its subsidiaries in Costa Rica: Fertitec Costa Rica S.A., Compañía Costarricense del Café S.A. (Cafesa) and Vidagro S.A. was analyzed.

29. In this case the Commission considered that the operation had adverse effects in the Costa Rican market of fertilizers, therefore it was determined that in order to accept the merger, the company YARA was obliged to comply with certain conditions. Due to the relationship between YARA and another company, that allows it to acquire or increase its substantial power significantly. In addition, there were the few or scarce competitors that somehow could limit the power that could result in a limitation or displacement of the competition.

30. Given the small number of competitors, the lack of a strong competitor, coupled with the existence of high barriers to entry, the merger could facilitate the ability of the companies involved to exercise its market power.

31. Regarding the assessment of the operation, the company YARA International was obliged to meet a series of conditions, among them:

- Asset Divestment: Sale of its 100% shareholding in the company FERTITEC to a third party;

ii) Supply Agreement. Commitment to sell a annual amount of ten thousand tons of urea and five thousand tons of MADP/DAP to a small or to a new market participant in the Costa Rican market of fertilizers (lower share of 10%)

iii) Suppression of Links with Competitors and Confidential Treatment of Sensitive Information: Avoid the presence of common members in companies of the group ABOCOL and ABOPAC, such as members of the Board of Directors, members shareholders, managers, advisors or any other personnel in any other executive post;

iv) Limit the Contract of Exclusive Distribution: cannot increase the number of products currently distributed through ABOPAC, and may not sign any new exclusive distribution contracts with ABOPAC or extend the scope of the current; among other mandatory and necessary conditions for the fulfillment to be given the authorization.

32. Currently, the case is under review by the Courts on the initiative of another competitor.

- SUTEL

33. The mergers analyzed were the following:

34. Merger between seven companies (Comunicaciones Múltiples JV de Costa Rica S.A., Cristal Asesores Forestales S.A., Comunicación Ilma S.A., Tortialantic S.A., Jalova de Tortuguero S.A., Quantum Comunicaciones S.A., Proyecto Aries S.A.) that provided trunking services. The Council approved the merger operation without conditions (Decision No. RCS-015-2014).

35. Acquisition of a network operator (RACSA) of the customer base and assets of an MVNO (Virtualis S.A.). The Council approved the acquisition without conditions (Decision No. RCS-017-2014).

36. Merger between a company that provides access to international submarine cable capacity (Columbus Network de Costa Rica S.R.L.) and a company that provides fiber optic carrier services (Promitel de Costa Rica S.A.), because the parent company of the first company (Columbus Network Limited) is going to acquire the parent company of the second company (Lazus Colombia S.A.S.) The Council approved the acquisition without conditions. (Decision No. RCS-077-2014).

37. An operation was notified to SUTEL to transfer the international submarine cable capacity (MIU and IRU) from one SOE operator (RACSA) to another SOE operator (ICE). The Council approved the merger operation without conditions (Decision No. RCS-255-2014).

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

- COPROCOM

38. The Commission to Promote Competition is empowered to issue technical opinions as part of their implementation efforts of the law and the prevention of anticompetitive practices

39. In the formulation and implementation of other policies, the Commission can express its opinion if they are contrary to the objectives set out in Article 1 of Law No. 7472, however, its opinions are not binding, or of mandatory compliance.

40. The formal channel to implement competition policy in other regulations, is by noting the damages or benefits from the perspective of the Competition law that a regulation or reform could bring.

This makes it easier for economic agents to make inquiries about the actions of other bodies that could affect the competition. Sometimes articles, technical studies on specific sectors are published, creating an informative channel that can be studied by other related sectors.

41. Various opinions were issued for the regulated sectors such as finance, pensions, telecommunications, insurance, securities and others. Currently the opinions have been adopted without question.

- SUTEL

42. The SUTEL as a competition authority has not participated in the formulation and implementation of other policies.

4. Resources of competition authorities

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

4.1.1 Annual budget (in your currency and USD)

- COPROCOM

Year	Budget ¹
2014	¢402.898.000 (Aprox. \$762.000)
2013	¢ 349.000.000 (Aprox. \$695.000)
2012	¢ 324.952.691 (Aprox. \$650.000)

43. It is important to add that the Competition Directorate and the Commission have additional resources from the MEIC budget to pay the lease of its offices and related accounts (e.g. electricity, water, private security, etc.). Such payments are not included in the annual budget of the Commission.

- SUTEL

44. The annual budget of SUTEL for 2014 was ¢10.256.716.000,00 (US\$18.800.000,00) of that amount the budget of the General Directorate of Markets was ¢1.800.381.000,00 (US\$3.300.000,00)²

¹ 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.

² The total budget it is up to USD 43.9 million of which USD 25.11 million correspond to the National Telecommunications Fund in accordance with the provisions of the letter DFOE-IFR-0694 issued by the Controller General of the Republic in December 2, 2013.

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

Period	Number of employees	Members of Coprocom³
2012-2014		
Director	1	
Economists	5	5
Attorneys at Law	6	5
Other professionals	0	0
Support Group	3	0
Total of Members	15	10

SUTEL

Period	Number of employees	Member of Council
2014		
Economists	4	
Attorneys at Law	7	
Support Group	0	
Engineers	6	3
Accountants	2	
Finance	1	
Statistic	1	
Total of Members	21	3

45. In 2014, the SUTEL had 100 employees, of which 21 are from the General Directorate of Markets.⁴

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

- COPROCOM

-Application of competition law

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

⁴ It is worth to mention that not all the resources of the General Directorate of Markets are devoted to competition matters.

-Revision of mergers and preventive practices

-Activities to promote competition

- SUTEL

-Enforcement against anticompetitive practices

-Merger review and enforcement

-Advocacy efforts

46. According to the institutional design, the General Directorate of Market thru its competition work group does all these actions, and allocates additional resources according with specific needs.

4.3 *Period covered by the above information*

47. The above information is from the period of January to December of 2014.

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

- COPROCOM

48. The Commission issued a series of technical criteria on the following subjects:

-Telecommunications

-Collusive tendering

-Regulations on steel, rice and tourist guides

-Determination of criteria for analyzing the concentration of the radio-electric spectrum

49. No market studies were conducted during 2014.

- SUTEL

50. There are no new reports and studies on competition policy issues.