



**COSTA RICA**



# GUIDE TO COMPETITION LAW

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# Competition Law in Costa Rica: Overview

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A Q&A guide to competition law in Costa Rica.

The Q&A provides a high-level overview of the antitrust and competition law rules for restraints of trade and dominance, merger control and the legal approach to joint ventures.

The section on restraints of trade and dominance covers the regulatory framework applicable to horizontal and vertical restraints, monopolistic behaviour and abuses of dominance; the regulatory authorities; exemptions and exclusions; penalties; third-party claims; and appeals.

The section on merger control covers the relevant rules for acquisitions; notification requirements; the timelines and rules regarding publicity and confidentiality; the substantive test; remedies, penalties; third-party claims; and appeals.

## Regulatory Framework

### Regulatory Authority

### Restrictive Agreements and Practices

### Monopolies and Abuses of Dominance

- Exemptions and Exclusions

- Penalties

- Third Party Damages Claims

- Appeals

### Merger Control

- Notification

- Procedure and Timetable

- Publicity and Confidentiality

### Substantive Test

- Merger Remedies

- Penalties

- Appeals

### Joint Ventures

### Contributor Profile

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## Regulatory Framework

### 1. What is the competition law framework?

The 1949 *Costa Rican Political Constitution* (Constitution) prohibits:

- Private monopolies. These are prohibited under the Constitution, however, if a company achieves a dominant position or a monopoly position due to its merits, it is not prohibited per se. See [Question 4](#).
- Any monopolising act which threatens or restricts freedom of commerce, agriculture, and industry, even if derived from the law.

(Article 46, Constitution.)

Costa Rica also introduced a specific competition law framework on 19 January 1995 with the *Law for Promoting Competition and Effective Consumer Protection* (Law 7472) and its implementing regulation (*Executive Decree 37899*).

Following recommendations from the OECD's Competition Committee, Costa Rica published its *Law for the Strengthening of Competition Authorities in Costa Rica* (Law 9736) on 29 August 2019 and its implementing regulation (*Executive Decree 43305*).

Article 46 of the Constitution and Laws 7472 and 9736, subject to certain modifications, are all currently fully in force and constitute the national basic framework for competition law in Costa Rica, together with the competition law regime created for the telecommunications (telecoms) sector, as explained below.

Restrictive agreements and practices are prohibited in Costa Rica under Articles 11 and 12 of Law 7472 (see [Question 3](#)). Abuses of dominance are also prohibited under Article 12 of Law 7472 (see [Question 4](#)). Merger control rules are set out in Articles 88 and following of Law 9736 (see [Question 13](#)).

Law 7472 established the Costa Rican national competition authority, the *Commission to Promote Competition* (*Comisión para Promover la Competencia*) (COPROCOM) (see [Question 2](#)).

COPROCOM has published the following competition guidelines on its website:

- [Guidelines regarding Competition Law Rules in Public Procurement \(2019\)](#).
- [Leniency Guidelines](#).

- COPROCOM also recently published for public consultation its new Guidelines on the Notification of Economic Concentrations.

In June 2008, the Costa Rican Legislative Assembly approved the *General Telecommunications Law* (Law 8642), which provides that:

- In Costa Rica, telecommunications networks and services are subject to a sectoral competition law regime, ruled by the provisions of Law 8642.
- The criteria established in Law 7472 and Law 9736, will apply in an auxiliary manner in such cases.

The Costa Rica telecoms regulator, the *Telecommunications Superintendency* (*Superintendencia de Telecomunicaciones*) (SUTEL) is therefore authorised to apply the regulations regarding competition law in the telecoms sector.

SUTEL has also published the following competition guidelines on its website (among others):

- *Guidelines on the Analysis of Anti-Competitive Practices (2023)*.
- *Guidelines on Imposing Fines*.
- *Guidelines on the Notification of Economic Concentrations*.
- *Guidelines to Analysing Economic Concentrations*.

SUTEL has also published details of its competition reviews on its *website*.

To ensure consistency in the application of competition law, Articles 55 and 56 of Law 8642 set out communication and co-operation requirements between SUTEL and COPROCOM. The regulations governing competition in the telecoms sector are generally very similar to general competition law provisions in Costa Rica.

## Regulatory Authority

### 2. Which authority or authorities regulate competition?

COPROCOM is the primary authority tasked with regulating all matters concerning market competition in Costa Rica. COPROCOM exercises administrative, functional, and budgetary independence. COPROCOM is an independent body pertaining to the Ministry of Economy, Industry and Commerce. It has technical, budgetary, functional, and administrative independence that allows it to perform its functions without any interference from political pressures.

The scope of Costa Rica's competition law extends to all undertakings participating in the Costa Rican market, except when a specific exception applies. This includes domestic or foreign agents, private or public agents, individuals, or companies. It also means that actions taken in other countries (provided they affect or involve the Costa Rican market) may also fall within the scope of Costa Rican competition law.

The only exemptions from competition law are acts duly authorised in special laws. As a result, there are only five sectors in Costa Rica where some specific acts are still exempt from the scope of competition law (see [Question 9](#))

COPROCOM can investigate potential competition law breaches or violations either following a complaint by individuals or entities or ex officio (on its own volition).

COPROCOM follows a structured "special" procedure when enforcing competition law, with the specific purpose of addressing the complexities of competition enforcement. It comprises three independent stages:

- The investigation stage, carried out by the Technical Unit.
- The instruction (pre-trial) stage carried out by the Technical Unit.
- The resolution/decision-making stage carried out by the Board.

The Board is the Superior decision-making body of COPROCOM, composed of three full-time proprietary Commissioners (Articles 5 to 12, Law 9736). The Technical Unit is staffed by technical staff appointed to conduct reviews and who carry out the first stages of the special procedure (Article 14 to 16, Law 9736).

This system ensures a separation of functions among the staff who participate in each stage of enforcement proceedings, with a view to guaranteeing due process and rights of defence.

COPROCOM is also expressly empowered to issue opinions, recommendations, and guidelines regarding advocacy and to conduct market studies.

Where COPROCOM determines that an undertaking has infringed Costa Rica competition laws, it is authorised to issue fines, which are calculated by reference to the undertaking's gross income during the tax year before the infringement occurred (see [Question 10, Fines and Monetary Remedies](#)). COPROCOM's determinations can only be reviewed and annulled by Costa Rican judicial courts.

SUTEL is responsible for enforcing competition law in the telecoms sector.

## Restrictive Agreements and Practices

3. What is the basic legal framework governing restrictive agreements and practices?

Horizontal restraints (*prácticas monopolísticas absolutas*), that is, restraints between competitors at the same level in the market, are prohibited, and any agreements entered into between competitors to undertake them are per se void (Article 11, Law 7472).

However, unilateral conduct (abuse of dominance (see [Question 4](#))) and vertical restraints (*prácticas monopolísticas relativas*) will be analysed by COPROCOM (or SUTEL if the conduct concerns the telecoms sector) under the "rule of reason" approach. Therefore, the conduct will only be deemed unlawful when:

- It can be demonstrated that the conduct harms competition in the Costa Rican market.
- The undertaking under investigation has substantial market power in the relevant market (as defined in Articles 13 to 15 of Law 7472).
- The undertaking fails to provide an efficiency defence in relation to the conduct.

(Article 12, Law 7472.)

## Monopolies and Abuses of Dominance

4. Are there specific rules that apply to monopolistic or dominant companies?

Single-firm conduct (abuse of dominance) is regulated under Article 12 of Law 7472.

Dominant undertakings are therefore prohibited from engaging in any of the activities listed in Article 12 of Law 7472, which includes (among other things):

- Fixing or imposing the exclusive purchase, sale or distribution of goods or services, by reason of the subject, geographical location or for specific periods of time, including the division, distribution or assignment of clients or suppliers between undertakings that are not competitors among themselves (imposing vertical market allocation by reason of subject, area and/or time).
- Imposing prices or other conditions that a distributor or supplier must observe when selling or distributing goods or providing services (imposing vertical price restrictions).
- Making the completion of a sale or transaction conditional on buying, acquiring, selling, or providing other additional goods or services, usually distinct or distinguishable, or reciprocally (tied sales).
- Making the completion of a sale, transaction, or the granting of a discount or other commercial benefits conditional on not using, acquiring, selling, or providing goods and/or services available and customarily offered to third parties (exclusive dealing).
- Entering into agreements with several commercial agents to (or inviting them to) exert pressure on a client or supplier, with the purpose of dissuading them from a specific conduct, or to retaliate or force them to act in a specific way (exclusionary group boycotts).
- Producing or marketing goods and services at prices below their average cost for prolonged periods of time and when there are indicators that losses can be recovered through future price increases (except in the case of promotions or the introduction of new products at special prices) (predatory pricing).

- Unjustifiably refusing to sell goods or services normally offered to third parties (refusal to deal).
- Imposing different prices or conditions of purchase or sale on buyers or sellers that are placed on equal terms (price discrimination).
- Unjustified actions to increase costs or hinder a competitor's production process (raising rivals' costs).
- Deliberately acting in such a way that induces the exit of competitors from the market or prevents their entry into it.
- Imposing payment or other commercial conditions not recognised in commercial practices under the threat of severing commercial relations (Imposition of sales or purchasing conditions).
- Establishing cross-subsidies between different goods or services offered by an undertaking (cross-subsidisation).
- The negative or insufficient difference between the price that a vertically integrated supplier charges its competitors for an input, and the price at which it sells to its customers a good or service for which said input is essential, in such a way as to prevent an equally efficient competitor survive in the market or compete effectively (margin squeezes).

In addition to the list above, any other exclusionary or exploitative practice may qualify as anti-competitive conduct if it demonstrably harms competition, and the undertaking fails to provide an efficiency defence.

However, the mere possession of monopolistic power or the holding of a dominant position in the market does not on its own violate Costa Rican competition law.

#### 5. How is dominance/monopoly power determined?

Under Law 7472, the following criteria should be considered to determine whether an undertaking has substantial power in the relevant market:

- The extent of the undertaking's participation in the relevant market affected by the conduct and its ability to unilaterally set prices or substantially restrict supply in such relevant market without other competitors being able to counteract that power, currently or in the future.
- The existence of any barriers to entering the relevant market and the elements that could foreseeably alter in any way such barriers as well as the supply coming from other competitors.
- The existence and market power of its competitors.
- The possibility of access by the undertaking and its competitors to different input suppliers.
- The undertaking's recent conduct.
- Other analogous criteria established in Executive Decree 37899.

(Article 15, Law 7472.)

6. Are there any recognised categories of behavior that may constitute abusive conduct?

Article 12 of Law 7472 provides an indicative list of relative monopolistic practices. However, this list is not exhaustive (see [Question 12](#)). Examples of abuse of a dominant position may include:

- Imposing vertical market allocation by reason of subject, area and/or time.
- Imposing vertical price restrictions.
- Tied sales.
- Exclusive dealing.
- Exclusionary group boycotts.
- Predatory pricing
- Refusal to deal.
- Price discrimination.
- Imposition of sales or purchasing conditions.
- Raising rivals' costs.
- Cross-subsidisation.
- Margin squeezes.

## Exemptions and Exclusions

7. Are there any exemptions from the competition laws? If so, what are the criteria for individual exemption or block exemptions?

There are no specific block exemptions provided within Costa Rican competition laws. However, sector-specific acts may be excluded under specific laws relating to certain industries (see [Question 9, Sector-Specific Conduct](#)).



8. Is it possible to obtain guidance from the authority as to whether an agreement or practice is likely to restrict competition?

It is possible for undertakings to obtain informal guidance from the relevant authority through informal consultation. Guidance can be provided on a no-name and/or confidential basis, if requested by the consulting party.

9. Is any conduct excluded from the scope of the competition laws?

## Sector-Specific Conduct

Certain acts are excluded from the scope of Costa Rican competition laws under sector-specific laws in five industries:

- In the sugar production industry, the Sugar Cane Industrial Agricultural League (*Liga Agrícola Industrial de la Caña de Azúcar*) ([LAICA](#)) sets specific production quotas and sale prices.
- In the rice production industry, the Rice Corporation (*Corporación Arrocería*) ([CONARROZ](#)) is authorised to control the import and distribution of rice in grain, among rice mills.
- In the coffee industry, the Costa Rica Coffee Institute (*Instituto del Café de Costa Rica*) ([ICAFE](#)) is authorised to set profit percentages for manufacturers and exporters.
- Maritime freight companies (maritime transport) are permitted to enter into fare agreements and can control distribution routes (maritime conferences) among themselves.
- Regulated professional associations, are permitted to set their own minimum professional service fees.

## De Minimis

Article 114 of Law 9736 establishes a *de minimis* provision for horizontal restraints (see also [Question 3](#)). Horizontal restraints will be excluded under this provision (and will therefore not be punishable) when the joint market share of the undertakings involved does not exceed of 5% in the relevant market affected by the conduct.

## Penalties

10. What penalties or sanctions are available for breaching the competition laws?

## Orders

COPROCOM can issue the following administrative orders and remedies where there is an agreement or practice that infringes competition laws:

- **Cease-and-desist orders.** Such an order may require the parties to cease pursuing the prohibited conduct, correct or suppress the infringing conduct, and/or refrain in the future from carrying out any activity that violates Costa Rican competition laws (Article 178(a), Executive Decree 43305).
- **Specific remedies.** These may be imposed in addition to fines, but the type of remedy imposed will depend on the type of conduct and the anti-competitive effect that the remedy is intended to prevent. The imposition of remedies is usually accompanied by follow-up measures to ensure compliance. These measures typically require the relevant undertakings to provide documents or information demonstrating their compliance with the remedies.
- **Interim measures.** COPROCOM can issue interim measures at any time during any stage of an investigation (structured special procedure) following a request from a third party when:
  - the measure is considered necessary to maintain a certain situation or conditions that might otherwise deteriorate during the investigation (*periculum in mora*) (see [Question 2](#)).
  - the third party has proper legal grounds (*fumus boni iuris*) for making the request; and
  - no superior interests would be affected by the interim measure.

(Articles 97 and following, Executive Decree 43305.)

- **Blacklisting.** COPROCOM can ban undertakings from entering into administrative contracts with the Costa Rican government or any public entity for two to ten years if they are found to have participated in collusive tenders (Article 178(c), Executive Decree 43305).

## Fines and Monetary Remedies

Fines are administrative sanctions applied by COPROCOM. These are calculated by reference to the undertaking's annual turnover (gross income) during the previous tax year.

Law 9736 also allows COPROCOM to issue sanctions for procedural infringements, with a view to ensuring effective of competition enforcement in Costa Rica.

Administrative fines on undertakings are calculated as follows:

- Minor infringements: up to 3% of the undertaking's annual turnover.
- Severe infringements: up to 5% of the undertaking's annual turnover.
- Very serious infringements: up to 10% of the undertaking's annual turnover. All antitrust infringements are categorised as "very serious" infringements.

COPROCOM is responsible for carrying out the fine collection process before the courts (Article 182 of Law 9736). Any debts created as a result of the sanctions imposed by COPROCOM which are not paid by the undertakings sanctioned, plus any applicable interest, can be collected by the courts.

Any person or entity that has been damaged or has suffered an injury (including as a result of anti-competitive acts) has the right to obtain compensation (civil liability) (Article 1045, *Civil Code*).

Claims for damages must be brought in the courts. However, compensation claims must be preceded by a finding of infringement by the relevant competition agencies.

To date, no claim to civil damages derived from a competition law infringement has been filed and, as a result, there is no practice experience or jurisprudence regarding the interaction of private and public competition enforcement.

Competition infringements do not give rise to criminal liability in Costa Rica. However, an undertaking that fails to comply with orders issued by COPROCOM or SUTEL will incur criminal liability and commit the offence of non-compliance with an administrative order (contempt) (Article 314, *Criminal Code*).

To ensure compliance by an undertaking under investigation, with any commitment offered to early terminate an investigation procedure against them, COPROCOM can request the undertaking to deposit a monetary guarantee. The amount of the guarantee cannot be higher than the maximum fine applicable to the conduct, and the guarantee cannot be for longer than the period established for compliance (Article 120 of Law 9736).

If the undertaking infringes any commitment under Article 106 of Law 9736, and this infringement is confirmed through a special procedure, COPROCOM can totally or partially execute the guarantee deposited in its favour (Article 78, Law 9736).

## Personal Liability

Individuals and or public officials who assist, facilitate, encourage, or participate in the realisation of monopolistic practices, either directly or as representatives of companies or de facto entities, are subject to fines of up to 680 times the lowest minimum monthly salary in Costa Rica (about USD593,000) (Article 119(g) and (h), Law 9736).

Fines imposed on individuals cannot not be paid by, insured or in any way guaranteed, directly or through an intermediary, by the undertaking to which the individual was linked when the infringement occurred. This also includes:

- The undertaking's parent company or any of its subsidiary companies.
- Companies that belong to the same business group of the undertaking, or which are subject to the same control as the undertaking.

(Article 119, Law 9736.)

## Immunity/Leniency

Law 9736 introduced a leniency programme that grants exemptions or fine reductions to undertakings that collaborate with the authorities in the investigation of absolute monopolistic practices.

Under this programme, the first leniency applicant (whistleblower) will benefit from full (100%) immunity, while the second, third, and fourth applicants can benefit from fine reductions of 50%, 30%, and 20%, respectively.

Penalties for individuals that co-operate with the competition authorities during the investigation of cases can be waived or reduced.

With the objective of protecting leniency applicants, the first applicant will only be liable for civil damages (follow-on claims) subsidiarily to the other infringers (Law 9736). This means that the first applicant will only be liable where other applicants or infringers are not able to pay the complete amount granted in damages by the courts.

In addition, a "leniency plus" programme allows a cartel member that did not secure complete immunity or a fine reduction through the general leniency programme to obtain immunity and an additional reduction in the applicable fine in exchange for:

- Disclosure of a separate prohibited horizontal agreement unknown to the authority at the time.
- Continued co-operation with the competition authority with respect to that conduct.

(Article 193, Law 9736.)

This means that a cartel member could be granted a 50% reduction in the fine for the original cartel and could also receive full 100% immunity from the applicable fine for the additional cartel reported.

### Third Party Damages Claims

11. Can third parties claim damages for losses suffered as a result of a prohibited restrictive agreement or abuse of dominance? Are collective/class actions possible?

### Follow-on/Standalone Actions

Third parties can claim damages for losses suffered as a result of a prohibited restrictive agreements or abuse of dominance (follow-on actions) under Article 1045 of the Civil Code, which states that any person or entity that has been damaged or has suffered an injury has the right to obtain compensation. Claims for damages must be brought in the courts.

However, standalone actions are not possible because compensation claims must be preceded by a finding of infringement by the relevant competition authority (Article 21, Law 7472).

It should also be noted that, to date, no claim for civil damages from a competition law infringement has been filed in Costa Rica. Therefore, the Costa Rica courts have no jurisprudence with regards to the interaction of private and public competition enforcement.

## Procedures or Rules

Costa Rica does not have a specialised court or tribunal for competition law. Any judicial claims are assigned to the competent court, depending on the claim brought, and in accordance with the parameters established by the judiciary in Costa Rica.

Appeals against a decision from COPROCOM are generally reviewed by a public law court (Contentious-Administrative Jurisdiction Courts).

Under Article 135 of Law 9736, COPROCOM's decisions must not rule on losses and damages caused by anticompetitive practices, as these matters must be heard exclusively by the competent judicial authorities. Follow-on claims for damages must be filed before a civil court and decided in an ordinary civil process.

Actions can be filed by any individual or legal entity that has sustained losses as a result of the conduct declared as an anticompetitive practice by COPROCOM. This applies even if the claimant was not a party in the special administrative procedure, provided the claimant can demonstrate a connection between their claimed loss and the anti-competitive conduct (causal nexus).

It is not possible to file a stand-alone action (see above, [Follow-on/Standalone Actions](#)).

Given that no claim for civil damages due to a competition infringement has been filed in Costa Rica (see above, [Follow-on/Standalone Actions](#)), there is currently no guidance from the courts in relation to the applicable limitation period in such a damages case. As a general guide, the statutory limitation period for consumer protection, competition and commercial regulations is four years, and for civil actions ten years.

The authority's decision is not binding to the court, as can be challenged by the defendant in the Contentious-Administrative Jurisdiction Court. However, it is very unlikely for a civil court judge to overrule the decision of the authority.

## Class/Collective Actions

Class actions are not contemplated in Costa Rican procedural law. However, if the cause of the economic loss is the same for multiple claimants, they could act together, by filing just one complaint and acting under the same legal representation.

If multiple claimants sharing the same cause of action against the same defendant(s) file separate complaints, they can ask the judge to join up their legal actions before the preliminary hearing.

## Appeals



12. Is there a right of appeal against any decision of the authority? Are rights of appeal available to third parties, or only to the parties to the agreement or practice?

It is possible for the parties to appeal decisions from the authority and several types of appeal are available:

- **Appeal for reconsideration (*Recurso de reposición o reconsideración*).** This can be brought in relation to decisions from the Board of COPROCOM. Depending on the type of decision, the appeal must be filed within the following deadlines:
  - decision regarding a request to terminate a procedure early: within 15 business days of communication of the decision;
  - final decision of the special procedure: within 15 business days of communication of the decision;
  - decision regarding a monetary guarantee: within three business days of communication of the decision;
  - decision resolving an interim measure: within 15 business days of communication of the decision;
  - decision regarding the confidentiality of the file: within three business days of communication of the decision;
  - decision to request information: within three business days of communication of the decision.
- **Appeal for revocation (*Recurso de revocatoria*).** This can be brought in relation to decisions from the Technical Unit of COPROCOM. Depending on the type of decision, the appeal must be filed within the following deadlines:
  - decision regarding the confidentiality of the file: within three business days of communication of the decision;
  - decision to request information: within three business days of communication of the decision.
- **General appeal (*Recurso de apelación*).** This can be brought in relation to decisions from the Technical Unit of COPROCOM. Depending on the type of decision, the appeal must be filed within the following deadlines:
  - decision resolving an interim measure: within 15 business days of communication of the decision;
  - decision ordering the opening of the pre-trial stage (*etapa de instrucción*): within 15 business days of communication of the decision);
  - decision ordering any addition or modification to the decision to order the opening of the pre-trial stage (*etapa de instrucción*): within 15 business days of communication of the decision;
  - decision rejecting a claim filed on the grounds that it was manifestly extemporaneous, impertinent, or inapplicable: within 15 business days of communication of the decision;
  - decision dismissing the claim: within 15 business days of communication of the decision).

(Articles 59 to 61, Law 9736.)

Rights of appeal are available to the parties to the agreement or practice under investigation. Any person who has a legitimate interest or subjective right that may be affected, harmed, or satisfied totally or partially by the final resolution, is also considered an interested party. The interest must be legitimate and can be moral, economic, or of any other nature (Article 36, Executive Decree 43305).

Only judicial courts can overrule decisions adopted by the competition authorities (Article 36, Contentious Administrative Procedural Code (Law 8508)).

## Merger Control

13. What merger control rules apply to mergers and acquisitions in your jurisdiction?

The merger control notification process was changed from an ex post (after the event) to an ex ante (before the event) process in the 2012 modification to Law 7472.

In addition, in 2019, Law 9736 repealed merger control Articles in Law 7472 and included new strengthened and updated merger control provisions in Law 9736 (Articles 88 and following).

Law 9736:

- Sets up an ex-ante notification system with suspensory effects and precludes the notification of transactions after the transaction is completed.
- Includes significant sanctions for companies that infringe this merger control notification regime.
- Adopts a two-phase procedure, replacing the former unitary procedure with an initial stage devoted to identifying problematic transactions and quickly clearing non-problematic ones.
- Increases the merger notification thresholds to allow for a more efficient use of COPROCOM's resources and to avoid the review of transactions without a relevant nexus to the Costa Rican markets. COPROCOM is now competent to review mergers in the financial sector (see below, Financial sector)

Mergers implemented before regulatory clearance may be subject to unwinding and may be liable to administrative fines or penalties (see [Question 20](#)).

COPROCOM oversees the analysis and makes determinations for all merger transactions that satisfy the relevant merger control thresholds (Articles 88 and following, Law 9736). However, sector-specific regulators may be involved in the merger review process, for example:

- **Telecoms:** SUTEL is responsible for reviewing and making determinations on mergers involving entities authorised to provide telecoms services in Costa Rica (irrespective of turnover thresholds). COPROCOM issues a non-binding opinion for telecoms merger control processes, on a mandatory request from SUTEL (Article 56, Law 8642).

- **Financial sector:** COPROCOM oversees merger transactions involving undertakings engaged in banking, finance, securities, insurance, and pensions in Costa Rica.

The National Council for the Supervision of the Financial Sector (*Consejo Nacional de Supervisión del Sistema Financiero*) (CONASSIF) can, exceptionally, order COPROCOM, in a reasoned decision, to pass to it any merger control process involving a financial institution in cases where the transaction carries a potential systemic risk to Costa Rica's financial system. In such exceptional cases, CONASSIF must carry out an analysis of the merger transaction and issue a final decision regarding the proposed merger.

The merger investigation procedure carried out by the competition authorities is generally conducted in two phases, with the purpose of dealing more efficiently with merger transactions which do not pose competition law risks (see [Question 16](#)).

#### 14. What are the relevant jurisdictional triggering events?

The following types of economic concentrations may be subject to competition law review in Costa Rica:

- Mergers.
- Acquisitions.
- Sales of commercial establishments.
- Strategic alliances.
- Any act or contract between competitors, suppliers, clients or other undertakings independent of each other, by which any of the following are concentrated and which results in the lasting acquisition of economic control by one of them over the other or others, or in the formation of a new undertaking under the joint control of two or more undertakings:
  - companies,
  - associations,
  - shares,
  - quotas
  - capital stocks,
  - trusts,
  - management powers, and/or
  - assets.
- Any transaction through which any individual or corporate entity, either public or private, acquires control of two or more undertakings, previously independent of each other.



(Article 88, Law 9736.)

Once the economic concentration has been defined as subject to competition law review (see above), merger control is triggered when the following three criteria arise concurrently:

- At least two of the undertakings involved in the merger must have carried out operations with an impact in Costa Rica over the previous two consecutive tax years (in Costa Rica the tax year runs with the calendar year).
- The thresholds are met in relation to the sum of gross sales, or the sum of all productive assets, in Costa Rica during the previous tax year, in relation to all the undertakings involved in the merger (joint threshold).
- The thresholds are met in relation to the individually generated gross sales, or the sum of all productive assets, in Costa Rica, of at least two of the involved undertakings during the previous tax year (individual threshold).

The above rules apply to successive transactions that are completed within two years and that in total exceed the thresholds set out above (Article 89, Law 9736).

For details of the latest jurisdictional thresholds see [Merger Control Quick Compare Chart: Costa Rica](#).

To compare jurisdictions, see the [Merger Control Quick Compare Chart](#).

## Notification

15. What are the notification requirements for mergers? Are they mandatory or voluntary?

Either of the merging parties can submit the notification to the competent authority (COPROCOM in most cases), which must comply with the requirements set out in Article 92 of Law 9736.

There are no official forms for completing a merger notification, and to date, COPROCOM has not yet established a filing fee. However, SUTEL has published a notification form on its [website](#) for mergers in the telecoms sector.

Merger notifications must be submitted to COPROCOM in writing (in the Spanish language) and must contain at least the following:

- Detailed description of the merger.
- Identification of the undertakings involved.
- Share capital structure of the parties.
- Activities of the undertakings involved.
- Affected markets.

- Evidence to prove compliance with notification thresholds.
- Effects of the proposed merger.
- Other additional information that may be relevant for the analysis.
- All information provided is considered a sworn statement by the notifying party.

## Procedure and Timetable

16. What are the procedures and timetable?

The procedure for notification and investigation of any relevant merger is set out as follows:

- **Pre-notification stage.** The notification must be filed by the parties prior to closing or before the material implementation of the merger transaction in Costa Rica.
- **Notification.** The stages for making a notification are:
  - **initial filing.** Either of the merging parties can submit the notification to the competent authority, which must comply with the requirements set out in Article 92 of Law 9736 (see [Question 15](#)).
  - **verification of compliance with formal requirements.** Once the notification is filed, COPROCOM has 15 business days from the initial filing date to verify that the formal requirements of the notification have been completed and to issue any requests for further information (if required) (Article 93, Law 9736).
  - **filing of additional information by the parties.** If COPROCOM requires additional information, the notifying party has 15 business days (from receiving the request) to submit the additional information requested (Article 93, Law 9736).
- **Publication and analysis.** Once COPROCOM has duly received all information requested, it will publish (by any means deemed appropriate) a brief notice regarding the merger transaction under analysis, granting any interested parties ten business days to file any relevant information about the merger (Article 96, Law 9736).
- **Phase I.** Once the merger notice is published by COPROCOM, it has 30 calendar days to conduct its Phase I review and issue a Phase I resolution. At the end of this 30-day period, COPROCOM will issue a decision to (as applicable):
  - unconditionally authorise the transaction;
  - request a proposal for commitments from the parties to address its competition law concerns;

- conduct a Phase II analysis. If COPROCOM determines that a Phase II review is necessary, it must include in its decision the reasons why it considers that the proposed merger transaction could potentially create risks for the competition process in the market affected by the transaction.

The parties then have ten business days to file any challenges to the authority's decision and at least ten business days to provide any additional information directly addressing the authority's competition law concerns which triggered ordering of the Phase II analysis;

- **Phase II.** Once COPROCOM has duly received all information requested, the authority has 90 calendar days to analyse and issue a Phase II resolution. COPROCOM will then issue a decision to either:
  - unconditionally authorise the transaction;
  - determine that the transaction has foreseeable anti-competitive effects that could be counteracted, and will grant the applicants up to 30 business days from the notice of the Phase II resolution to file a proposal for commitments;
  - prohibit the proposed transaction.

If the competition authority fails to issue its resolution in the terms provided (both for Phase I and Phase II) the merger transaction is considered unconditionally cleared (Article 94, Law 9736).

For an overview of the notification process, see [Costa Rica Merger Notifications Flowchart](#).

## Publicity and Confidentiality

17. How much information is made publicly available concerning merger inquiries? Is any information made automatically confidential and is confidentiality available on request?

### Publicity

COPROCOM publishes a summary of the proposed merger transaction for interested third parties to submit any information considered relevant. This publication includes a summary of the proposed transaction, the parties involved and their commercial activities, and the markets that may be affected by the transaction.

### Automatic Confidentiality

The file handled by COPROCOM can be accessed only by the merging parties while the merger procedure is ongoing. No third parties can request access to the full file, only to a redacted file categorised as the public version of the file once COPROCOM has reached a final decision. Any information submitted by SUTEL to COPROCOM is automatically considered confidential in its entirety (Article 134, Executive Decree 43305).

## Confidentiality on Request

Parties can request specific information to be declared confidential and must provide a reason for their request. COPROCOM requests the parties to submit a redacted version of the merger notification.

Final decisions also include a confidential version and a redacted version omitting all information declared confidential by the merging parties.

It is considered a very serious infringement if COPROCOM's staff breach their obligation to treat information requested as confidential. In such cases, monetary sanctions may be imposed, the responsible staff member can be dismissed without COPROCOM being deemed responsible, and COPROCOM must file a formal complaint before the judiciary against the staff member.

## Substantive Test

18. What is the substantive test?

Any merger transaction that does not have as its object or as its foreseeable effect to significantly hinder competition in the relevant market affected by the transaction or in other similar or substantially related markets, will be approved by the corresponding competition authority (Articles 101 and following, Law 9736; Articles 146 and following, Executive Decree 43305).

For these purposes, the competition authority must consider the:

- Relevant market.
- Other undertakings also currently participating in the relevant market.
- Degree of concentration in the relevant market.
- Effects of the concentration on other competitors or consumers.
- Potential efficiencies caused by the transaction.

There is no specific market share threshold in Costa Rica applied by the antitrust authorities when approving a merger transaction. However, the following mergers are presumed not to be anti-competitive (subject to proof to the contrary):

- Mergers where there is no horizontal or vertical overlap (conglomerate mergers).
- Mergers where, despite the existence of limited overlaps, the impact on competition is limited, that is where:
  - horizontal overlap is below 15% of the market;

- horizontal overlap is between 15% and 30% of the market, but the transaction does not increase individual market shares by more than 2%; or
- vertical overlaps where no party has a market share exceeding 30%.
- Mergers where an economic agent acquires exclusive control over an undertaking over which it already had joint control.
- When the merged entity's activities in Costa Rica are non-existent or marginal.

(Article 153, Executive Decree 43305.)

A merger can also be approved, despite its anti-competitive object or effects, if:

- Efficiencies directly generated by the merger are not achievable by less restrictive means, and are verifiable and sufficient to counterbalance the potential anti-competitive effects of the merger.
- The merger was necessary to avoid the exit from the market of the productive assets of one of the undertakings involved in the merger (failing firm under Articles 147 and 149 of Executive Decree 43305).
- The anti-competitive effects could be offset by remedies imposed.
- The competition authority considers it necessary for any other reason to protect national consumers' interests.

(Article 101, Law 9736.)

## Merger Remedies

19. What are the types of remedies that can be required as conditions of merger clearance?

The merging parties can propose commitments at the initial filing stage if the merging parties are aware of the possible anti-competitive effects of their proposed transaction. Otherwise, commitments may be requested or offered later during Phase I or Phase II (see [Question 16](#)).

Designing the remedies proposal can be subject to negotiation sessions between the parties and COPROCOM staff (Article 158, Executive Decree 43305). Once formally submitted, COPROCOM can do one or more of the following:

- Approve the proposal without further comments.
- Partially approve the proposal with some changes.
- Request additional remedies from the parties.

The authority can determine the best way to monitor compliance from the parties.

Merger remedies can be behavioural or structural. When dealing with mergers, COPROCOM mainly imposes structural remedies together with behavioural remedies. Few cases include only behavioural remedies. Remedies cannot last for longer than ten years (although they can be extended for an additional five-year term if there is evidence that the merger still generates anti-competitive effects) (Article 104, Law 9736; Articles 151 and following, Executive Decree 43305).

## Penalties

20. What are the penalties for failing to comply with the merger control rules?

### Failure to Notify Correctly

The penalties for failing to comply with the notification requirements are as follows:

- If the parties provide an incomplete or delayed information or fail to submit their notification within the relevant deadline: this is a minor infringement, sanctioned with an administrative fine of up to 3% of the turnover of the undertakings involved.
- If the parties refuse to notify when requested by the authority, or provide false, altered, or misleading information: this is a severe infringement, sanctioned with an administrative fine of up to 5% of the turnover of the undertakings involved.
- If the parties fail to notify at all when the transaction is subject to mandatory notification in accordance with the statutory thresholds: this is a severe infringement, sanctioned with an administrative fine of up to 5% of the turnover of the undertakings involved.
- If the transaction concerns a merger which is deemed to have anti-competitive effects in the market and the parties either submit their merger notification after the relevant deadline or fail to notify at all: this is a very serious infringement, sanctioned with an administrative fine of up to 10% of the turnover of the undertakings involved.

### Implementation Before Approval or After Prohibition (Gun-Jumping)

The penalties are as follows:

- Implementing the transaction without obtaining prior authorisation (gun-jumping): this constitutes a severe infringement, sanctioned with an administrative fine of up to 5% of the turnover of the undertakings involved.
- Implementing the transaction without obtaining prior authorisation (gun-jumping) where the merger is deemed to have anti-competitive effects in the market constitutes a very serious infringement: sanctioned with an administrative fine of up to 10% of the turnover of the undertakings involved.

In either case, the competition authority can also request the unwinding of the consummated merger or to request mandatory remedies (Article 161, Executive Decree 43305).

Individuals and or public officials who assist, facilitate, encourage, or participate in the realisation of an illegal merger, either directly or acting as representatives of companies or de facto entities, are subject to a fine (Article 119(g) and (h), Law 9736).

Fines imposed on individuals cannot be paid by, insured or in any way guaranteed, directly or through an intermediary, by the undertaking to which the individual was linked when the infringement incurred. This also includes:

- The parent company or any of its subsidiary companies.
- Companies that belong to the same business group of the undertaking or which are subject to the same control of such undertaking.

Even though competition infringements do not give rise to criminal liability in Costa Rica, an undertaking that fails to comply with orders issued by COPROCOM or SUTEL will incur criminal liability for contempt as set out in Article 314 of the Criminal Code. In such a case, the relevant competition authority must file a complaint before the Attorney General, who then takes over the prosecution on behalf of the state.

Where undertakings or individuals fail to pay the fine imposed, the competition authority will certify what is owed, and will submit the debt plus applicable interest to the enforcement process through judicial means.

There is little case law precedent to date regarding the enforcement of penalties from COPROCOM, in view of how recently Law 9736 was passed. However, taking into consideration the commitments assumed by Costa Rica to the Competition Committee during Costa Rica's accession process to the OECD (see [www.oecd.org/legal/Costa\\_Rica\\_OECD\\_Post\\_Accession\\_Report\\_2023.pdf](http://www.oecd.org/legal/Costa_Rica_OECD_Post_Accession_Report_2023.pdf)), COPROCOM and SUTEL can be expected to actively pursue the enforcement of competition law rules.

## Appeals

21. Is there a right of appeal against the regulator's decision and what is the applicable procedure? Are rights of appeal available to third parties or only the parties to the decision?

## Rights of Appeal

The following administrative appeals are available to the parties in relation to merger control decision:

- **Appeal for reconsideration.** This can be brought in relation to decisions from the Board of COPROCOM. The deadlines for filing are as follows:
  - final decision of the merger procedure: within 15 business days of communication of the decision;

- decision regarding the confidentiality of the file within three business days of communication of the decision;
  - decision to request information: within three business days of the communication of the decision.
- 
- **Appeal for revocation.** These can be brought in relation to decisions from the Technical Unit of COPROCOM. The deadlines for filing are as follows:
    - decision regarding the confidentiality of the file: within three business days of communication of the decision;
    - decision to request information: within three business days of communication of the decision).

(Articles 59 to 61 of Law 9736.)

Once administrative appeals have been concluded, final decisions by the competition authority can be judicially appealed by filing an ordinary lawsuit in the Contentious Administrative Court.

## Procedure

Administrative appeals are filed to COPROCOM.

Only judicial courts can overrule decisions adopted by the competition authorities, and therefore the final decision by the competition authority must be appealed by filing an ordinary lawsuit in the Contentious Administrative Court, within one year after the issuance of the final decision.

The judicial process tends to take about four years or more from filing the appeal to a final decision.

## Third Party Rights of Appeal

Administrative rights of appeal in merger cases are available to the parties to the merger transaction under review. However, any person (individual or corporation) that has a legitimate interest or subjective right that could be affected, harmed, or satisfied totally or partially by the final resolution, is also considered an interested party. The interest must be legitimate and can be moral, economic, or of any other nature.

22. Has the regulatory authority issued guidelines or policy on its approach in analysing mergers in a specific industry?

To date, no guidelines or policies have been issued by COPROCOM in relation to analyzing mergers in specific industries.

However, SUTEL has published various guidelines in relation to the telecoms sector (which are non-binding). See [Question 1](#).

## Joint Ventures



23. How are joint ventures analysed under competition law?

There is no formal legal definition of a joint venture (JV), and there is no special treatment of JVs regarding merger control. However, SUTEL's Merger Guidelines state that:

- A full-function JV will constitute a merger subject to merger control if it performs all functions of an independent economic entity consistently over time.
- Determining whether a JV is classified as "full function" or limited depends on how much it relies on its parent companies and the extent to which it operates independently in the market on a lasting basis.

#### Contributor Profile

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**Professional and academic qualifications.** King's College London, LLM Competition Law (2016); San José, Costa Rica. Universidad de Costa Rica, Juris Doctor in Law (LLB equivalent) (2011). Admitted to Bar at the Costa Rican Bar Association (2011).

**Areas of practice.** Competition law and corporate M&A.

##### Recent transactions

- Advising a national supermarkets chain in the acquisition of a convenience store chain in San José and receiving unconditional authorization from the national competition authority.
- Advising a transnational company in the potential acquisition of a marina in Costa Rica.
- Acting for Blackstone as local counsel in relation to a refinancing package for Mohari Hospitality and Gencom for the Four Seasons Resort Costa Rica and Andaz Papagayo, both at the Peninsula Papagayo.

**Languages.** English and Spanish, as well as working knowledge of French.

**Professional associations/memberships.** Since 2017, founding member of Women in the Profession (WIP) Vance Center - Costa Rican chapter, currently acting as Board Member; since 2014, member of Costa Rican-American Chamber of Commerce (AMCHAM), as member of the Legal Affairs Committee, the Antitrust Subcommittee, and the Trade Facilitation Committee.

#### Publications

- *OECD's Regional Center for Competition in Latin America, Newsletter No. 2 "Update and perspectives of the new leniency program in Costa Rica" pg.22, 2020 [www.oecd.org/daf/competition/december-2020-rcc-lima-newsletter.pdf](http://www.oecd.org/daf/competition/december-2020-rcc-lima-newsletter.pdf)*
- *"Uber or not Uber, - that is not the question". – Newspaper article at El Financiero, financial newspaper in Costa Rica, 2017.*

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#### RESOURCE HISTORY

Competition Global Guide (Merged).

This document uses hybrid information from the previous Merger Control and Restraints of Trade and Dominance global guide Q&As. The Q&A has been reviewed by the author to ensure it reflects the current law and market practice as of 1 December 2023.

#### Related Content

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