

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[Agency name, Jurisdiction]

The following template is submitted by **Commission to Promote Competition (Coprocom)** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Please add brief presentation/link to agency website www.coprocom.go.cr

Costa Rican competition authority, the **Commission to Promote Competition (COPROCOM)**, which came into being in January 1996. COPROCOM is an agency with functional, administrative, technical and financial independence.

The main objectives of COPROCOM is to promote effective competition and to defend the proper functioning of the markets, understanding that, with competition, more efficient markets can be reached and there is greater consumer welfare.

The recently approved law “Law for Strengthening the Competition Authorities” is the most in-depth and ambitious reform of Costa Rica’s Competition regime.

The seven main aspects addressed in the reform are:

- It broadens the scope of application of the law;
- It strengthens the institutional structure and powers of the competition agencies;
- It improves competition advocacy tools and regulations;
- It enhances investigation tools and enforcement procedures;
- It improves the merger procedure and adapts its analysis to best international practices;
- It modifies infractions and penalties for them to become dissuasive; and,
- It establishes new mechanisms to engage in international cooperation.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The Coprocom does not discriminate in the investigation and enforcement of the antitrust laws based on the nationality of the parties.

Article 9 of Competition Law 7472, establishes the scope of application of the competition regulations by stating:

“Article 9.-Scope of Application

The regulations of this chapter apply to all economic agents, with the exception of public service concessionaires by virtue of a law, those that execute actions duly authorised by special laws, and State monopolies, all pursuant to the terms and conditions set forth by its regulations.”

In its turn, Article 2 of said Law defines economic agent as follows:

“Economic agent

In the market, all persons, de facto or legal entities, public or private entities that in any way participate in the economic activity as buyer, seller, offer or claimant of goods or services, in its own name or on behalf of someone else, whether or not these are imported or domestic or have been produced or provided by them or by a third party.”

Therefore, the scope of the Costa Rican regulations in competition matters includes domestic or foreign, private or public, individuals or companies. It also means that actions taken in other countries will fall within the scope of Costa Rican law if they affect or involve the Costa Rican market.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*

- v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

(i) In the case of COPROCOM all the legislation and binding regulations regarding competition are available at the following link:

https://www.coprocom.go.cr/acerca_coprocom/legislacion.html

All COPROCOM Guidelines are available at the following link:

https://www.coprocom.go.cr/publicaciones/Guias_para_investigacion.html

(ii) *The Law for Strengthening the Competition Authorities* replaces the current general procedures for conducting investigations and imposing sanctions with a procedure designed with the specific purpose of responding to the complexities and specifications of competition matters. The special procedure comprises three independent stages with defined maximum timeframes: investigation; instruction (or pre-hearing); and, decision-making. This procedural structure separates functions among the staff who participate in each stage of the enforcement proceedings.

(iii) *The recently law of Competition establishes that the Coprocom shall issue guidelines to promote transparency, predictability and legal certainty in relation to the application, and procedures before said authorities. Also, establishes that these guides may be prepared, and must be submitted to public consultation, prior to their issuance.*

(iv) The Coprocom follows applicable procedural rules in investigations and enforcement proceedings

(v) The Coprocom has published its decisions. Coprocom is working in investigations and procedures guidelines. Also Coprocom shall make its guidelines available to the public, promptly and in an opportune manner and by he means deems appropriate.

d) Investigative Process

- i. *Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. *Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. *Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

(i) Costa Rica's competition agencies can start their investigation either *ex officio* or after receiving a complaint. The procedure often begins with competition authorities carrying out a preliminary investigation in order to gather information to assess whether they should open an ordinary administrative procedure.

Preliminary investigations are confidential. COPROCOM is not required to notify the possible parties about such preliminary investigation, or grant them access to the file, which is entirely confidential at this stage. When an ordinary procedure is opened, however, the parties must be notified of the investigation.

- (ii) Notification to the parties once the formal investigation begins under the ordinary administrative procedure creates a number of rights for investigated parties, such as the right against self-incrimination and due process rights protected by the Constitution. In the context of competition enforcement actions, these rights take a number of specific forms.
- (iii) All evidence and documentation gathered by the competition agencies must be made available to the interested parties for review and for their defence. The minimum period that must be given to the parties to consult this evidence is 10 days, even though the relevant administrative authorities may grant a longer period if appropriate

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The special procedure comprises three independent stages with defined maximum timeframes:

- Preliminary investigation (12 months and 6 months additional);
- instruction (or pre-hearing); (10 months and 6 months additional)
- decision-making. (7 months and 1 month additional)

The procedure has mechanisms that grant undertakings with the possibility to require the early termination of an investigation. The three early termination mechanisms are: termination due to manifest inadmissibility, early termination with acknowledgement of the commission of the infraction (settlements), and early termination with an offer of commitments.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

- (i) The Coprocom' s investigations are subject to a number of rules, policies, and guidance documents regarding the identification and treatment of confidential information.

- First merger notifications protection of business secrets and other confidential information
- (ii) Preliminary investigations are confidential.
- (iii) Access to certain contents of the file may be restricted if they consist of: 1) State secrets; 2) confidential information of other parties; or 3) in general, if such access grants a party undue privilege or an opportunity to unlawfully harm the Administration, a counterparty, or third parties involved in the procedure or otherwise. Furthermore, certain documents are protected by legal privilege, particularly in the context of attorney-client privilege. Legal privilege is regulated in the Bar Association's Code of Behaviour
- (iv) Coprocom is working in a Manual for Handling Confidential Information

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Coprocom has rules, policies and guidelines to ensure that its officials are objective and impartial and do not have material conflicts of interest. All members of the Superior Body shall be regulated by the provisions of Law No. 8422, Law against Corruption and Illegal Enrichment in Public Office, of October 6, 2004.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

- (i) Notification to the parties once the formal investigation begins under the ordinary administrative procedure creates a number of rights for investigated parties, such as the right against self-incrimination and due process rights protected by the Constitution. In the context of competition enforcement actions, these rights take a number of specific forms.

- (ii) Notification to the interested party of the nature and purposes of the procedure; right to be heard, and opportunity of the interested party to present the arguments and produce evidence the party deems relevant; opportunity for the investigated party to prepare its defence, which includes necessarily access to information and to administrative background; the right to be represented and advised by lawyers, technicians and other qualified persons; adequate notification of the decision and its justification adopted by the administration; and the right to appeal the decision.
- (iii) *Administrative Proceeding* is obliged to summon the parties for a private oral hearing. The private oral hearing has two purposes: (i) granting the parties involved in the investigation access to COPROCOM's docket; and (ii) allowing the parties to submit de jure and de facto pleas, as well as evidence.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

The special procedure shall be governed by respect for the principles of due process, speed, orality, simplicity, informality, real truth, ex officio investigation, impartiality, transparency, nondiscrimination and good faith.

The order to initiate the investigation shall be communicated to the parties. If the party is a legal entity, notice shall be served at the corporate domicile established by the Commercial Registry, unless the party has indicated to the Administration its interest in receiving notices by another means.

If the reported party lacks a corporate domicile or if the offices have been closed or the address is inaccurate, unclear or nonexistent, the first notice shall be served in the following order:

- a) At the administrative offices or the commercial establishment, with a duly identified person of legal age;
- b) At the contractual domicile or the real or registered domicile, or to its resident agent, where appropriate. In the latter case, the notice shall be served at the office the agent has opened for such purpose. If the legal entity has joint representation, it shall be deemed duly notified if notice has been served to only one of its representatives.

For notification of individuals, notice shall be served personally. Notices served at the residence or place of work, at the contractual domicile, home or real or registered domicile, at the indication of the Administration or any of the parties, shall have the same effect.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Costa Rican legislation for competition authorizes the imposition of sanctions of an administrative nature upon verification of an anti-competitive behaviour

The Supreme Body shall issue its final resolution within sixty business days from the conclusion of the oral and private appearance. When appropriate, it shall impose the respective measures and sanctions.

In accordance of ARTICLE 27. Dissemination and Publication. Coprocom shall make available to the public, in a swift and timely manner and using the media it deems pertinent, its final resolutions, agreements, market studies and recommendations, criteria, opinions and guides, as well as the decisions and reasoning provided by public entities that differ in their opinions and recommendations. Said publication shall safeguard the confidential information to which it has had access.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The administrative procedure ends with the adoption of a final decision by COPROCOM, which may impose sanctions if a competition law infringement has been established.

COPROCOM's decisions may be appealed. Although it is possible for COPROCOM to change its decision following this appeal.

In Costa Rica, only the authorities or the courts of justice can review and, if appropriate, annul all or part of the acts issued by the competition authorities. The Contentious-Administrative Jurisdiction are competent to protect the legal rights of any person, and to guarantee or re-establish the legality of any behavior that is subject to Administrative Law, as well as to decide on any aspect of the relationship governed by Administrative Law