



Costa Rica¹ is the second smallest country in Central America after El Salvador and lies between Nicaragua and Panama and has coastlines on the Caribbean and the Pacific. It is a democratic republic with a strong system of constitutional checks and balances.

It has stood out for its relative stability and has benefited from the most developed welfare system in the region. The standard of living is relatively high. Land ownership is widespread.

Economy

Costa Rica is the only country in Central America with a social market economy. Although Costa Rica's subsistence is largely on agriculture, it has expanded its economy to include strong technology and tourism sectors. The economy depends mainly on tourism, agriculture and electronics export. Poverty has been gradually reduced and a strong social safety net has been put into place.

The Costa Rican economy grew at a healthy 5.6 percent in 2003, with growth estimates exceeding four percent in 2004. Among the other Central American countries, it has achieved a high standard of living, with a per capita income of about US\$4,300.

Controlling the budget remains the only challenge for the country's economic policymakers.

Recently, Costa Rica has concluded its negotiations with US to participate in the US-Central American Free Trade Agreement (US-CAFTA), which if ratified, would result in economic reforms and a liberalised investment climate.

Competition Evolution and Environment

Costa Rica experiences a stable democracy that has been in continuous existence for decades, as well as a social market economy, since the early 1980s has undergone a gradual process of privatisation and liberalisation.

PROFILE	
Population:	4.02 million
GDP (Current US\$):	18.4 billion***
Per Capita Income: (Current US\$)	4,300 (Atlas method)*** 9,040 (at PPP.)
Land Area:	51,100 sq kms.***
Life Expectancy:	78 years**
Literacy (%):	95.8 (of ages 15 and above)**
HDI Rank:	45
Sources: - World Development Indicators Database, World Bank, 2005 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Reforms began in 1986 and strengthened in 1990, when Costa Rica became a member of the General Agreement on Tariffs and Trade (GATT). Since 1986 and more particularly since 1990, there has been serious liberalisation, coupled with important moves to deregulate and increase competition in the domestic economy. Complimenting the policies to open the market to free trade, tax reforms and state deregulation, the competition legislation was established in the mid-1990s as a fourth policy in Costa Rica.

The competition legislation adopted in the mid 1990s has resulted in an increasing number of actions by the competition authorities. However, competition remains restricted in a few but important areas. For instance, in practice the external and internal marketing of domestically produced sugar is controlled by a cartel. Further, there are some strategic areas that are monopolised by public institutions such as *Refinadora Costarricense de Petróleo* (RECOPE) in petroleum refining and marketing, National Insurance Company (INS) in insurance market, The National Rice Corporation of Costa Rica (CONARROZ) in rice marketing, and National Liquor Factory (FANAL) in alcohol distillation and marketing.

* Original paper submitted in June 2005. Revised in August 2005 & March 2006.

1 Some of the information in this introduction has been compiled from the CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/yi.html>

New laws implementing the results of the Uruguay Round, the Free Trade Agreement with Mexico and improving the promotion of competition and consumer protection, were approved by the Legislative Assembly in December 1994.

Costa Rica's legislation on competition consists of:

- (i) Article 46 of the Constitution and Law No. 7472 of December 20, 1994 and
- (ii) the Law on Promotion of Competition and Effective Defense of Consumers, published in the Official Journal La Gaceta on January 19, 1995.

The conditions for regulating the competition are guaranteed by the Political Constitution of the Republic, Article 46, which prohibits monopolies of a particular type and practices 'restricting the freedom of trade, agriculture and industry'.

Competition Law

Costa Rica's *Law on Promotion of Competition and Effective Defense of Consumers (Law No. 7472)* came into force at the beginning of 1995, introducing a set of principles and standards which define and consolidate the legal framework that regulates or prevents restrictive trade practices, monopolies and other forms of conduct. Furthermore, the Law also establishes the objective of elimination of unnecessary regulations affecting business.

In order to achieve the aforementioned objectives, the law establishes five fields of action:

- Economic deregulation;
- Price regulation in cases of exception;
- Anti-monopoly legislation;
- Unfair competition; and
- Consumer protection.

Further, the law has also created three commissions to see that the objectives are achieved and for the development of the five areas:

- The *National Commission for the Consumers* – responsible for the implementation of consumer protection regulation.
- The *Commission for the Promotion of Competition (COPROCOM)* – responsible authority for implementing anti-monopoly norms.
- The *Commission for Deregulation* – entrusted with the responsibility to develop the process of economic deregulation.

Despite the progress made in terms of regulation, the enforcement of competition law has been difficult due to factors, such as the constitutional jurisprudence turning more conservative over trade liberalisation.

Institution and its Competencies

The COPROCOM operates under the Ministry of Economy, Industry and Commerce (MEIC) and has been entrusted with the authority to enforce Law No. 7472 and

its regulations. Its role has been crucial for the development of country's competition policy.

The Commission has been working to provide information and promote competition, with a view to modifying patterns of doing business in the country's markets and thereby justifying the adoption of antitrust legislation. From its inception, the Commission has focused on promoting the competition culture in the country, by educating all Costa Ricans concerning the rights granted in Law No. 7472, which guarantee free competition and access to markets.

As a regulatory body responsible for ensuring open competition, the Commission is accountable for its action before the nation's courts, the office of the Attorney General, the press and the business community.

Consequently, as part of its promotional work, the Commission releases a series of publications, bulletins, handbooks and copies of jurisprudence designed to promote continuous discussion of the rules and principles behind the competition legislation.

With the passage of time, COPROCOM has acquired legitimacy with the public. It represents one of the most successful examples among those institutions promoting conditions for competition.

Box 108.1: Investigation against Price Setting

Recently, COPROCOM undertook an investigation in the beans market, which involved the members of the National Chamber of Bean Processors and other related products. The practices were found in violation of Article 11 clause (a), by setting the price of the 900 gm beanbag and for exchanging information to set the price of beans purchased in bulk.

Furthermore, evidence was also found for alleged division by the agents of the territory for the purchase of beans in bulk thereby violating Clause (c) of Article 11. However, the evidence did not conform to the factual reality.

After analysing all the facts, COPROCOM declared that the findings conform to the discussions being held during meetings, which were attended, by the members and officers of the Chamber which discussed the bulk purchase price of beans.

Sanctions were applied for fixing the price and for the exchange of information to fix the purchase price of beans in bulk. Moreover, the Commission ordered all the parties involved to abstain from any such practices in future.

Source: UNCTAD's Phase-I Report on COMPAL Programme

Anticompetitive Practices

The Law on Promotion of Competition and Effective Defense of Consumers, Law 7472, classifies anticompetitive practices as absolute monopolistic practices and relative monopolistic practices.

COPROCOM is responsible for preventing and sanctioning absolute and relative monopolistic practices as well as unlawful mergers, at the urging of a party or through an official investigation.

Absolute monopolistic practices generally include manipulation of prices, quantitative restrictions on goods and services, agreements between competitors to divide the market and collude on bidding. On the other hand, *relative monopolistic practices* signifies vertical division of the market, agreements to limit supply, predatory pricing, and any act inducing competitors to leave the market or prevent their entry.

The experience of the Commission during the first seven-year of its mandate as the authority overseeing the Competition Law has been focused on both preventive action and the imposition of penalties. In the beginning, investigations have been made primarily on absolute monopolistic practices and horizontal concentrations.

Altogether the Commission has taken vigorous and repressive stance to discourage businesses from adopting monopolistic practices.

Box 108.2: Agreement Leading to Absolute Monopoly

COPROCOM initiated simple administrative proceedings against various companies working in the field of surface transportation of containers because it was found that they entered into an agreement to raise the fares charged for their services leading to absolute monopolistic practice.

Certain economic agents from the transport sector published an anonymous article in order to communicate the existence of fare fixing for foreign trade with a view to increasing the prices of surface transport.

The case was established and sanctions were imposed on the companies who participated in such acts.

Source: UNCTAD's Phase-I Report on COMPAL Programme

Box 108.3: Penalty against Rice Processing Companies

The COPROCOM opened a formal investigation against various companies in the rice industry for engaging in monopolistic practices by violating Articles 11 (b) and 12 (e & g) of the competition law.

It was alleged that the companies entered into an agreement not to purchase rice from national producers and by pressurising them to sell to other economic agents. This also included an agreement not to process, sell or permit storage of rice originating from the United States, which was about to be imported at that time.

COPROCOM imposed a fine against the rice processing companies involved, having determined that they had indeed engaged in absolute monopolistic practices.

Source: Report on Development and Enforcement of Competition Policy and Laws in the Western Hemisphere, Tripartite Committee

Regulatory Framework³

The regulatory system in Costa Rica has performed relatively well in the context of regulating state-owned companies. The envisaged economic changes necessary for competitive markets have brought about a new regulatory framework.

Telecommunications Sector

The telecommunications network is relatively modern and sophisticated. There is no telecommunications law, rather a number of laws and regulations govern the sector. Basic telecommunication services are provided by *Instituto Costarricense de Electricidad* (ICE), a state-owned monopoly created in 1963. While ICE was initially created to provide electricity services, it later expanded to cover telecommunications services as well.

Responsibility for overseeing the sector lies with the Regulatory Authority of Public Services (ARESEP). The body supervises, controls and verifies the use of services.

In 1999 Costa Rica's legislative body approved the outline of a law that would have liberalised Costa Rica's telecommunication's industry. However, the efforts were not successful.

Yet the government is keen to implement reforms to pave the way for increasing liberalisation. It recognised that despite the relative efficiency of ICE, it is now incapable of meeting the demands of the changing environment. Currently, plans to reform ICE are stuck in the Congress.

3 www.american.edu/initeb/jn0859a/html/it_landscape_of_costa_rica_-_t.html

Recently, Costa Rica has signed a FTA with USA (pending approval in the Congress) where Costa Rica agreed to open the market to national and international investors in those markets, besides ICE.

Energy Sector

Costa Rica remains dominated by a state-owned power sector. The ICE controls the majority of commercial activities in the system. However, the role of the state in the production of electricity remains strong.

In combination with MINAE, the Ministry of Planning, and the *Autoridad Reguladora de los Servicios Públicos* (ARESEP) nearly all aspects of the electricity sector involve government owned bodies. MINAE handles policy making activities involving the protection of natural resources and renewable energy sources as well as coordinating activities and strategies within the electricity sector.

The Ministry of Planning is in control of the economic viability of future expansion in the energy sector, and ARESEP creates and monitors regulatory measures dealing with infrastructure matters, such as telecommunications, public transportation, and electricity providers.

Consumer Protection

The provision for consumer protection is enshrined in *The Law on the Promotion of Competition and Effective Defense of Consumers* (Law No. 7472). One of the main objectives of the Law is to effectively protect the rights and legitimate interests of the consumers.

To achieve this objective, the law has created a separate body *viz. the National Commission for the Consumer (CNC)*; whose sole objective is to implement consumer protection regulation. According to Law, any consumer whose rights have been violated can file a complaint before the CNC.

However, CNC has no capacity to carry out thorough revision and issue recommendations on the new governmental measure to avoid over-regulation.

The issue of consumer protection in Costa Rica calls for an improvement. This does not necessarily mean modification of the consumer protection law but concrete plans in order to ensure effective application within the

current legal framework. In other words, strengthening is needed, particularly in the institutional aspects.

Concluding Observations and Future Scenario

Although some progress has been made, yet the scenario of competition culture in the country appears to be very dismal. One of the factors, which is acting as a hurdle in the smooth functioning of COPROCOM is Article 9 of the competition law that provides some exceptions in the application of the anti-monopoly framework.

The agents that render public services under concession in the terms provided by laws in accordance with the limitations established in the concession and in special provisions, and State monopolies created by law, provided they exist based on special laws, to conduct the activities expressly authorised in said laws, in fields, such as: insurance, bank deposits in current accounts or sight deposits, alcohol distilling for internal consumption, fuel distribution, telephone and telecommunication services, distribution of electric power and water.

More rigorous efforts should be put in for promoting the law, especially dissemination among the groups, such as specialised media, entrepreneurs and some consumer associations. This should be carried out, keeping in mind the better implementation of competition legislation.

Furthermore, the existing Law for the Promotion of Competition and the Effective Defense of Consumer suffers from a series of inadequacies, which in turn hinders the Commission's capacity. Specifically, it lacks the following:

- It does not foresee pre-notifications in case of mergers; and
- Provides a restricted field of action as it excludes public service companies and state monopolies.

Therefore, as the agency responsible for promoting and enforcing Law No. 7472 and its regulations, it is required to make the competition legislation applicable to all the players in the market.

Though COPROCOM can give its opinion on new rules, laws and their likely impact on the conditions for competition, its influence is limited to giving advice and not to deliver binding decisions. However, the Commission has been one of the most successful examples among those promoting competition.

Suggested Reading

UNCTAD's Phase-I Report on COMPAL Programme "*Strengthening Institutions and Capacities in the area of Competition and Consumer Protection Policies in Latin America*"

[†] **Guillermo Rojas** is a Lawyer, specialist in Economics Law with emphasis in international trade. He is working on his thesis in order to obtain the Masters degree in Economics Law. He is just appointed Director of the Proceedings and Mergers Department of the Support Unit of COPROCOM