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LATIN AMERICAN COMPETITION FORUM

-- Session IV: Competition Issues in Telecommunications --

Contribution from Chile (TDLC)

9-10 September 2009, Santiago, Chile

The attached document from Chile is circulated to the Latin American Competition Forum FOR DISCUSSION under session IV of its forthcoming meeting to be held in Chile on 9-10 September 2009

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**LATIN AMERICAN COMPETITION FORUM
- 9-10 September 2009, Santiago, Chile -**

Session IV: Competition Issues in Telecommunications

**Contribution from Chile (TDLC)
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1. Introduction

1. Chile is living a technological converging process, similar to that of developed countries. By means of this process, it is possible to deliver various services using the same technology. Thus, using a coaxial network, for example, it is possible to broadcast cable TV as well as other services such as wired telephone systems and internet. The same happens through mobile networks: They are used not only to deliver mobile telephone services but also to access the internet and, in the future, they will be used to broadcast TV signals through the introduction of a 3G telephone system. At the present time, using the wired telephony network, it is possible to make calls as well as to access the internet. This converging process generates more competition among networks and inside the same network.

2. In this converging process, during recent years, the increase and development of the mobile telephone system have played an important role in decreasing the digital gap. Nowadays, Chile has a mobile telephone penetration level up to approximately 90%, with more than 14 million subscribers at domestic level. Internet connections have increased a great deal in the last 4 years. In 2005, there were less than one million lines, notwithstanding, this year this amount is expected to double, reaching up to 2 million internet connections at the domestic level. On the other hand, paid television has 1.47 million subscribers at the domestic level. The wired telephone system has not stopped growing in spite of the fact that the number of lines remains at 3.5 million. The dominating company has decreased its market share to 60%, but non dominant companies have increased their investment levels, developing network

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competition. This new competition has encouraged the companies concerned to invest in order to double or triple their broadbands, and to invest in prepaid broadbands, etc.

3. In this process, the Tribunal de la Libre Competencia (TDLC) (Court for Free Competition Protection) has developed an important work since it was created in 2003. The regularisation of telecommunications began in 1982¹, that is, 27 years ago. During this period, it has not suffered great changes, but under its protection different services have been developed; services that were not considered by lawmakers at the time. As in other countries, the technological advance of this sector has burst in and legislation has been surpassed. New services have given origin to different trials and recommendations, most of them at the TDLC. In this point, the TDLC has clarified the outstanding changes required to increase the markets competition, as for example, the telephone number portability to a new carrier and its work has been essential for the development of new technologies and services.

2. Function of TDLC (Court for Free Competition Protection) in the Telecommunication Area

4. The TDLC's role in telecommunications matters has been very important. The TDLC has participated in analysing the operations concentration in the sector, such as the merger of VTR and Metropolis Internet, both cable TV carriers, and the merger of the mobile telephone carriers Bellsouth and Movistar.; It has also delivered its pronouncement with regard to consultations set up by the Subsecretaria de Telecomunicaciones (Subtel), the regulator (Telecommunications Undersecretary's Office), on the process of rate regulation to local telephone dominant carriers and in respect to the convenience of current mobile telephone concessionaires' participation in the public bidding of advanced mobile digital telephone service (3G).

5. In all cases, the Court has expressed an important opinion, for example:

Report on Free Rate Regulation (Report N° 2/ 2009):

6. The TDLC studies the competition conditions of the current market in order to analyse if the process of rate regulation for local telephone dominant carriers (Telefónica CTC, Telsur, Telcoy and Entelphone) shall continue or if enough competition exists to allow tariffs to be free from price regulation.

7. In its report, the TDLC concludes that the current market is defiant, thanks to greater competition from the mobile telephone towards the wired telephone system, which makes it possible to eliminate the maximum charge rates to which the fixed charges, the measured local service (SLM in Spanish), that charges calls among subscribers of the same primary area, the public telephones and the telephonic connection were submitted. Notwithstanding, the TDLC maintains the definition of dominant carriers. In another direction, it mentions that the maximum charge rate regulation process has to continue for other services associated with the local public telephone service and for the interconnection services, since it considers that the conditions for competition are still insufficient to liberalise those rates.

8. On the other hand, the recommendations established by the TDLC are interesting as to increase the competition level in the telecommunication market:

9. The Ministerio de Transporte y Telecomunicaciones (Ministry of Transports and Telecommunications) asked the TDLC to consider a principle of non domestic discrimination to the carriers qualified as dominant, in order to protect consumers from less competitive areas. In regard to this request, the TDLC pointed out that "Such a measure would oblige the companies to offer the same prices – with regard to public telephone service - to clients who generate a different cost structure for the company"

¹ Telecommunication General Law N°18,168.

(C. 150). And it continues: “in spite of the fact that this measure claims to protect consumers located in geographical areas that generate greater costs to companies, it is possible that companies, which have to take a decision in order to provide or not with service at a determined area, shall prefer not to offer the service to these consumers as they do not represent a good business, leaving them in a less favourable situation; so this Court esteems that it is not recommendable to have only one rate area (C. 151). Nevertheless the Court advises the former, and recognises that it is the sector regulator’s entity concern to establish in the respective rate decree the rates areas that would determine the different users’ categories. It also recommends Subtel not to establish too small rate areas or homogenous areas so that each rate area includes zones with different competition degrees among networks (C. 152).

10. In the same way, it stipulated that, without the detriment of the principle of non discrimination among users of a same category established in the Ley General de Telecomunicaciones (LGT) (Telecommunications General Law), in any way the companies with market power shall not unjustifiedly discriminate in their prices to consumers, as it is adverse to the free competition standards (C. 153).

11. In regard to the plans and bundles offered, the Court recommends adopting measures that constrain the bundle offerings that include both wireless and wired telephone systems, in order that the controller role exercised by the wireless over the wired telephone system is not eliminated (C. 155). For example, it recommends that in any offer that makes a bundle with different services, to identify the prices of each service, the discount associated to the bundle, and that services are really offered separately at the indicated prices (C. 158).

12. As to the network disintegration and services resale, the Ministry of Transports and Telecommunications requested to facilitate resale offerings. The TDLC warned Subtel to exercise its standardisation and inspecting functions, to assure network disintegration by the wired telephone carriers that use networks already installed, establishing the obligation of delivering minimum offers that include all the necessary elements to be hired by third parties, and to give free and updated information to the public. Moreover, it recommends establishing a standard detailing the technical and administrative services necessary to establish a homogenous and transparent price mechanism for the carriers that are obliged to fix those services charges (C. 160). In this sense, the TDLC decided in favour of disintegrating networks of local telephone dominant carriers towards efficient tariffs.

13. The TDLC advises to make “all the possible efforts to have a porting number in a short period of time, in wired as well as in the mobile telephone system, in order to increase competitiveness in all the telecommunication markets” (C. 163).

14. Another TDLC recommendation that would increase competitiveness in this market is to eliminate the tariff differentiation of calls among telephones of a same company (on net) and towards other companies telephones (off net).

Request about companies’ participation in bidding renovation for radio broadcasting grant (Resolution N° 29/ 2009).

15. The TDLC authorised the GLR Chile S.A., subsidiaries and related companies, - that operate radios “Imagina”, “Rock and Pop”, “Concierto”, “Futuro”, “FM Dos”, “Corazón”, “Pudahuel”, “Hit 40”, “ADN Radio Chile”, “Radioactiva” and “Radio Uno” – to participate in bidding renovation for radio broadcasting that will be prepared by Subtel during this year, related to the FM frequencies which expire in 2010.

16. The request presented to the TDLC arose as a consequence of one of the conditions under which the concentration operation among the radiobroadcasting groups GLR-Prisa and Iberoamerican Radio was approved in July 27, 2007.

17. On the other hand, in this request the TDLC mentioned two modifications to the LGT, dated September 2008 and February 2009, which changed these bidding assignment rules and established restrictions to related companies to participate, indicating that they cannot request more than one application for a same area, in a same bidding and they can not transfer them in at least two years since the granted date. At the TDLC judgement, these conditions do not generate competitive conditions *ex-ante* due to the spectrum granted and, on the contrary, they limit business groups' participation in the biddings that include two or more of their frequencies that must be renewed in a same area.

18. Moreover, the TLDC esteemed that it has not been possible to appreciate the existence of conducts against the free competitiveness since the merge of the GLR group with Iberoamerican Radio, because the elapsed time has been very short.

Mobile Telephone Carriers Participation in the Future Bidding of 3G (Resolution N° 27 /2008).

19. The TDLC made a decision about Subtel's request of excluding, limiting or conditioning the participation of the current mobile telephone concessionaires on the advanced digital mobile telephone bidding. The TDLC decided that, according to free competitiveness protection standards comprised in Decree-Law N°211, and the stipulated by the Telecommunication General Law N°18,168, it would not exclude the participation of the current concessionaires of the mobile telephone public service in the bidding in consultation.

20. Furthermore, Subtel was requested to put the following measurements in force:

- a) To implement the mobile telephone number portability.
- b) To subdivide the frequency band 1710-1755 MHz and 2110-2155 MHz in the greatest number of blocks that it technically allows, in an efficient manner and with reasonable costs, to deliver advanced mobile communication services or 3G with national cover. Additionally, the Court recommends that bases establish that each applicant shall be able to bid only one block in the first bidding.
- c) To define in the bidding bases, the execution terms and putting into service date, that applicants shall comply, considering terms that do not restrain or impair the interested parties that, at the bidding date, lack of infrastructure or mobile communication networks.

Supreme Court Opinion (Supreme Court Resolution N° 27, 01/27/2009)

21. The Supreme Court stays within the complaint appeal presented by Subtel, Nextel Chile S.A., Fiscalía Nacional Económica and VTR Banda Ancha Chile S.A., and changes the TDLC decision, establishing a maximum limit to the holding of a radio-electric spectrum of 60 MHz, with which it limits the participation of concessionaires of the concerned mobile telephone carriers.

Merge of Bellsouth and Telefónica Móviles S.A. (Resolution N° 2/ 2005)

22. The Court (TDLC) approved the operation requested by Telefónica Móviles S.A. from Spain, BellSouth Chile, Inc. and BellSouth Chile Holdings, Inc. In the Resolution it esteems that, despite involving a greater market concentration with clear entrance barriers, the operation does not tend to impede, restrain or obstruct free competitiveness, in view of the technical and economical characteristics of

the market, the offer and demand forces of this industry and the influence of the rapid technical changes in which the mobile telephone services operate. Without detriment of the former, the Court established a series of conditions that must be fulfilled by the consulting companies.

23. Some of the most interesting recommendations of this resolution are:

- The Court considers it is advantageous to introduce the Operadores Móviles Virtuales (OMV) (Virtual Wireless Operators) to the market since they help to increase market competitiveness and a most efficient use of the spectrum.
- Likewise, the Court is in favour of the telephone number portability as a way to avoid the problem of captive clients and to do this it imposes the obligation of providing a free information service for the number change for the benefit of users.

Merge of VTR Metrópolis (Resolution N° 1/ 2004)

24. The TDLC approved the merge consulted by Liberty Comunicaciones de Chile Uno S.A. and Cristalchile Comunicaciones S.A. The TDLC regarded this merge to be positive for the domestic telecommunication market, since it would allow having an actor able to offer the three services as a whole: broadband Internet, telephone and cable television, and to compete, using another network that offers these services, with the local telephone dominant carrier. Notwithstanding, given the high concentration level the merger will produce, the Court established certain conditions to the merge.

3. Conclusion

25. The TDLC's role has been essential for the development of the telecommunications sector in Chile. Its opinion produced differences with Subtel, the regulator. Notwithstanding, most of its suggestions must be taken into account, such as the telephone number portability, the incentive to compete in networks and the disintegration of local telephone networks of dominant carriers. Other changes are also necessary, for example to create a Telecommunication Experts Panel and to analyse and examine the concession system.