Global Forum on Competition

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Venezuela

-- Session II --

This contribution is submitted by Venezuela under Session II of the Global Forum on Competition to be held on 28 February and 1 March 2013.
COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Venezuela* --

1. What is the state of competition in the television broadcasting sector in your jurisdiction?

1. The telecommunications sector in Venezuela is regulated by the National Telecommunications Commission (CONATEL). The television broadcasting sector includes open signal and subscription broadcasting. There are 189 companies in the subscription TV segment, 182 of them authorised by CONATEL to provide the service at regional level. 19 economic agents operate broadcast TV channels. From a competition standpoint, two subscription television channels have a market share of 67.22%, based on the number of subscribers. The situation is reflected in the chart below:

![Share of the main subscription TV broadcasting companies by number of subscribers (Q1 2012)](chart)

2. The Herfindahl-Hirschmann concentration index (HHI) applied to the subscription TV sector indicates a highly concentrated market dominated by a small number of firms.

Table 1. Television broadcasting value chain

<table>
<thead>
<tr>
<th>Creation chain</th>
<th>Distribution chain</th>
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<tbody>
<tr>
<td>Production of content</td>
<td>Distribution of content</td>
</tr>
<tr>
<td>Integration of content</td>
<td>Platform provision</td>
</tr>
<tr>
<td>Packaging of content</td>
<td>Final broadcasting</td>
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* Contribution from the General Inspectorate for the Promotion and Protection of Free Competition (Antitrust – Venezuela).
2. **Do consumers have real choice among authorised platforms and service providers?**

3. Consumers can pick the television services supplier of their choice on criteria of price and service quality, in various forms such as UHF, VHF, community TV and subscription TV.

3. **Is there any evidence of excessive prices (for example subscription prices of pay-TV or fees charged to advertisers)?**

4. The prices charged by service providers are governed by the provisions of the Organic Law on Telecommunications, published in the Official Gazette no. 39.610 of 7 February 2011, and as such set their prices under the supervision of the regulator.

4. **Is there evidence of poor quality, poor service, and/or lack of innovation and investment?**

5. Once companies start providing telecommunications services, they must comply with quality criteria which, in the case of subscription broadcasting, are contained in an administrative order published in the Extraordinary Gazette no. 5.831 of 21 December 2006.

5. **Are there significant barriers to entry and expansion (and exit)? What is the nature of these regulatory barriers (e.g. network effects)?**

6. Given that the telecommunications business generally requires substantial investment in infrastructure for a medium- to long-term return, the calculation made by a potential telecommunications service provider must take account not only of investment in infrastructure but also compliance with the specific requirements of telecommunications legislation, especially as companies interested in providing a telecommunications service must apply to the regulator, CONATEL, and fulfil both economic criteria and statutory minimum technical requirements for service provision and service quality.

7. Certain barriers:
   - access to sources of financing,
   - investment in infrastructure to enable the provision of telecommunications services within a given area,
   - investment in technological modernisation and the rollout of infrastructure to extend coverage or offer additional services,
   - transaction costs linked to negotiations with other operators to determine interconnection and joint operation costs associated with adaptation of the physical space,
   - regulatory provisions to process the authorisation needed to obtain the corresponding administrative license under Article 16 of the Organic Law on Telecommunications. All operators who have all or some of the attributes listed under "general qualities" are considered to comply with the requirements set forth in the general terms for administrative licenses.

6. **Do you consider the existing legal and regulatory framework to be effective in supporting a robust competition policy for the broadcasting sector?**

8. Venezuela has a national regulatory authority (NRA) in addition to CONATEL, which is responsible for monitoring, evaluating and reporting the behaviour of statistical variables for the telecommunications market. It also helps to promote and protect free competition (Chapter II, Article 37,
paras. 21 and 22 of the Telecommunications Act). There is also the General Inspectorate for the Promotion and Protection of Free Competition (Antitrust), which issues binding opinions on economic concentrations in the telecommunications sector.

9. To date, the national competition authority has not had to consider any case concerning vertically-integrated providers.

7. What do you consider to be the most significant current and future challenges for competition policy in television broadcasting?

10. The question of barriers to entry for an authorised competitor has been addressed above. Concerning new technologies and future challenges in the telecommunications sector, technological innovation in particular is a key factor, since constant advances mean that companies have to invest in order to modernise networks and the infrastructure on which service delivery depends. The telecommunications sector has expanded over the last ten years and is more dynamic, the industry has been opened up in order to ensure a level playing-field and offer possibilities on the Venezuelan market for any company that wishes to enter the sector. For example, our government promotes digital television projects and transnational companies that have invested substantially in telecommunications network operation, especially optical fibre.

11. However, Antitrust – Venezuela believes that competition-related problems could arise in the sector in future, since it is highly concentrated in revenue terms even though there are many operators. However, open community TV organisations have been created.

8. Has your competition authority conducted any market studies relevant to the television and broadcasting sector?

12. The competition authority has conducted relevant market studies in the television and broadcasting sector, as follows:


- Ruling no. SPPLC/063-2001 of 18 December 2001, parties: RCTV C.A., Promofilm S.A v. Corporación Venezolana de Television (Venevision). It was found not to have engaged in anti-competitive practices.


- Opinion no. SPPLC/VF-0045-2012 of 7 December 2012, concerning economic concentrations raised by V.M.P. CABLEVISION TV, C.A., whereby citizens Jose Ramon Rodriguez de Vegas, Alexis Enrique Martinez and Carlos Alberto Silva de Paez sold all their shares in the company of citizen Maigualida Chiossone Lopez, acting in compliance with the fifth and final provision of the Act reforming the Organic Law on Telecommunications.
9. **Does your jurisdiction have in place a transparent procedure for granting spectrum licenses?**

13. Our jurisdiction has a transparent procedure for granting spectrum licenses. In accordance with administrative decision no. 39.832 of 30 December 2011 issued by the National Telecommunications Commission, certain parts of the available radioelectric spectrum will be auctioned. Should they be partially or entirely earmarked by the government for the communication needs of public bodies, licenses will be granted directly by CONATEL, which is empowered to allocate, direct and control portions of the spectrum.

14. Tender procedures and terms for the selection of licensees are set forth at Article 86 of the Telecommunications Act. CONATEL will elicit bids for portions of the spectrum in a letter setting out the conditions for completing the process and specifying the frequency bands to be allocated, the estimated starting price, the technical, economic and legal requirements and the selection criteria. Any person wishing to acquire a license may submit a bid letter to CONATEL, setting out their proposal and stating the part of the spectrum requested, the use that will be made of it and the necessary technical specifications. The rules and procedures described allow for the efficient allocation of the radioelectric spectrum for broadcasters and service providers.

10. **What has been your relevant experience in competition law enforcement relating to television and broadcasting? Case studies:**

10.1 **Cartel**

15. On 26 November 2004, SVS initiated administrative proceedings against RCTV and Venevision, alleging agreements and exclusive and concerted practices to define prices and quality conditions and to share out the market, all of these being prohibited practices under Articles 6, 10.1 and 10.3 of the law to promote and protect free competition.

16. After examining the evidence, the General Inspectorate found that RCTV and Venevision had acted in concert in order to offer advertisers preferential prices for advertising space, thus restricting the involvement of other TV channels in the marketing of advertising space during TV programmes, creating an artificial barrier which gave RCTV and Venevision market impact and the possibility of distorting the market, and hence of increasing concentration in order to maintain their leading position. The two companies were fined for the above-mentioned practices.

10.2 **Manipulation of factors of production**

17. On 23 May 2007, CORPORACIÓN TELEVEN filed a complaint against the media research company PANAMERICANA AGB DE VENEZUELA S.A., alleging distortion of information and audience rating data in favour of certain TV channels.

18. In June 2008, the antitrust authority found on the basis of the legal and economic evidence that Panamericana had behaved in such a way as to create a mechanism that enabled it to distort or manipulate factors for the distribution of information in order to obtain a sample inconsistent with the reality. It was therefore fined for involvement in anti-competitive practices under Article 8 of the law to promote and protect free competition, concerning factors relating to the processing of information.

10.3 **Concentration**

19. On 19 June 2012, Venezuela's telecommunications regulator was asked for an opinion on the presumed links between a number of companies authorised to use different radio frequencies in the same
20. After examination, the regulator concluded, in view of their share ownership structure, that the companies FUNDACIÓN JOSÉ ALEJANDRO HIGUERA CARDENAS Y ASOCIADOS, C.A. were related entities forming an economic unit within the meaning of Article 15 of the law to protect and promote free competition. For the above-mentioned reasons, the regulator, CONATEL, had sufficient evidence to suppose that granting a new administrative license and broadcasting license could result in concentration harmful to the sector under consideration.

21. Have you dealt with any case(s) where these two authorities reached or planned to reach inconsistent decisions? Do you have in place any mechanism addressing the issue of cooperation between NCA and NRA? There has not been any case to date of parallel jurisdiction or of two authorities reaching or planning to reach inconsistent decisions. However, Antitrust – Venezuela concluded a cooperation agreement with CONATEL in 2000 for the purposes of treating competition-related cases in the telecommunications sector, and under the Telecommunications Act CONATEL should seek the competition authority's opinion on planned business concentrations of telecommunications undertakings.