LATIN AMERICAN COMPETITION FORUM

-- Session IV: Competition Issues in Telecommunications --

Contribution from Spain (Presentation)

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The attached presentation from Spain 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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Session IV: Competition Problems in the Telecommunications Sector

Presentation by Spain
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Introduction

Broadband markets and NGA networks: Different approaches by the GMT and CNC

Control of concentration vs. ex-ante regulation: Different approaches to the analysis of entry barriers in the ABERTIS case

Possible solutions and future challenges

Different objectives of the GMT and CNC
- GMT: To promote investments in new networks
- CNC: To ensure a “level playing field” at all times

Which approach should take priority? Short-term vs. long-term
- Regulatory holidays are not needed for a dominant operator to continue investing.
- Establishment of a reasonable ladder of investment makes it possible to combine a level playing field with investment incentives

Ultimate goal: Maximize consumer welfare
- Lower prices and new technological innovations need to be encouraged
  - But it is essential to ensure effective competition

Conflict in broadband access markets (I)

Broadband markets and NGA networks
- Conflict between GMT and CNC in the ex-ante regulatory review of wholesale broadband access (markets 4 and 5)

GMT proposal:
- Access to Telefónica’s NGA markets (SMP operator) restricted to civil works
- Differentiation of wholesale indirect access remedies
  - Competitive zones: Reasonable prices and fewer obligations in terms of transparency and the replicability of retail offers
  - Non-competitive zones: Cost-based pricing and stricter obligations on transparency and the replicability of retail offers
- Exemption from indirect access obligations at speeds > 30 Mb/s
CNC observations:
- De facto deregulation of access to Telefónica’s NGA networks
  - Does not ensure a level playing field, given Telefónica’s initial advantage
- Differentiation of indirect wholesale access remedies and exemption for speeds >30 Mbit/s reinforce the earlier deregulation
- No justification for segmentation between competitive and non-competitive zones, particularly from the dynamic standpoint

Final CMT decision
- Only eliminates differentiation of remedies by geographic zones

ABERTIS case (I)

ABERTIS:
- Class-monopolist in the market for transport and broadcasting of terrestrial television signals in Spain
- Since February 2009, subject to ex-ante CMT regulation (market 18) which forces it to give access to third parties through co-location, ABERTIS broadcasting centre to centre
  - Ex-ante CMT regulation based on conditions imposed on ABERTIS in a takeover operation in Catalonia in 2003

In summer 2008, ABERTIS notified two takeover operations to CNC:
- ABERTIS / AXION: ABERTIS would acquire its main competitor in Spain and Andalucía
- ABERTIS / TELEFUSIÓN MADRID: ABERTIS would acquire its main competitor in Madrid

In February 2009, CMT undertakes an ex ante regulatory review of market 18:

ABERTIS case (II)

CNC-CMT collaboration mechanisms:
- CNC requests obligatory but non-binding reports from CMT on takeover operations.
  - CMT sees no problems in takeover operations since it considers ex-ante regulation to be sufficient to allow new operators to enter the market.
- CMT issues an ex ante regulatory review proposal without substantial alterations.
  - Access to third parties continues to be given on a broadcasting centre to centre basis, without analysing the problems of the investments needed to transport the signal to each broadcasting centre, which entail high levels of sunk costs.
  - Third-party access continues to be provided basically through co-location, without taking account of the high sunk costs of this alternative.
- CNC considers that high market entry barriers persist with the CMT’s ex ante regulatory proposal.
ABERTIS case (III)

- CNC-CMT dispute in the analysis of entry barriers:
  - CNC considers that the transport phase and sunk costs involved in centre to centre access represent very important entry barriers:
    - Evidence: inefficiency of market 18 and concentrated operation conditions in Catalonia.
  - CNC proposes to require ABERTIS to set up wholesale services that allow for a reasonable ladder of investment to enable third-party operators to enter the market:
    - Wholesale transport and broadcasting services from a single national point, and from different regional points.
    - Centre to centre access in terms both of co-location and interconnection.
  - CMT rejects this possibility on the grounds that it discourages investment and does not promote the creation of alternative broadcasting networks.

ABERTIS case (IV)

- In the end CNC and CMT maintain divergent positions:
  - In May 2009, CMT decides upon a review of market 18 without accepting the CNC’s proposals.
  - In July 2009, CNC authorizes the takeover operations on the condition that ABERTIS establish a ladder of investment in Andalucía and Madrid, allowing for effective entry of new competitors, to substitute for the competition previously provided by AXIÓN and TELEDIFUSIÓN MADRID.
    - ABERTIS has now formally pulled out of both takeover operations.

Possible solutions

- Strengthen instruments of coordination between the competition and regulatory authorities:
  - Compulsory non-binding reports
  - Collaboration agreements
  - Informal meetings of technical staff to discuss different points of view
  - Creation of joint work teams.

- But coordination is difficult if basic discrepancies persist:
  - “Level playing field” vs. investment promotion
Future challenges

- Minimize entry barriers and ensure a level playing field
  - More flexible use of the electromagnetic spectrum
  - Ensure reasonable ladders of investment
  - Safeguard wholesale markets

- Reduced the distortions generated by high end-user prices, particularly in the mobile phone segment

- Look into the possible anti-competitive effects of the “tying” and “bundling” of services by dominant operators

- Guarantee periodic access to audiovisual content