

Telecoms & Media 2013 – Chile

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General

I Provide a general overview of the telecoms regulatory scheme.

In Chile, General Telecommunications Law 18.168 ensures that the use and enjoyment of radio spectrum frequencies will be free and of equal access through essentially temporary telecommunications concessions, permits or licences, granted by the state. Any person may choose them in such form and manner as prescribed by law.

Concessions

A concession granted by the government by supreme decree will be required for the installation, operation and use of the following telecommunication services:

- public;
- intermediate, which are provided to telecommunication services through facilities and networks for that purpose; and
- radio broadcasting.

The duration of such concessions are:

- 30 years for public and intermediate services, renewable for equal periods at the request of the interested party; and
- 25 years for radio broadcasting concessions during which the concessionaire shall have a preferential right to renew.

The term of telecommunications services starts from the date on which the respective supreme decree is published in the Official Gazette and concession renewal applications must be submitted at least 180 days before the end of the respective period.

Anyone interested parties may oppose the granting of the concession or its modification, following a technical and administrative process, subject to judicial review.

The law defines the core elements of a concession and they may, therefore, not be modified. The Ministry of Transport and Telecommunications may, in serious and urgent cases and in a reasoned decision, provisionally agree to the requested modifications, notwithstanding what it may ultimately resolve. Requests involving changes to elements of the concession, other than those prescribed by law, must be reported to the Secretariat, prior to its execution.

Permits

On the other hand, a telecommunications permit, likewise granted by the government, is required for the installation, operation and use of limited telecommunications services.

The permit is granted by exempt resolution of the Telecommunications Secretariat, dependent on the Ministry of Transport and Telecommunications.

Telecommunications permits have a duration of 10 years, renewable at the request of the interested party.

Limited television services not requiring a radio spectrum do not need a permit and their duration is indefinite.

Limited services whose broadcasts do not exceed the facility where they are installed or that use only authorised facilities and networks of concessionaires of intermediate services to exceed said field, inside or outside the country, also do not require a permit.

Fire departments and other public utility services have priority and preference for the authorisations and renewals they request.

The Ministry of Transport and Telecommunications is authorised to grant provisional permits for temporary, non-commercial and experimental operations, to install telecommunications services at fairs or exhibitions.

Telecommunications licences

The limited services consisting of experimental stations, stations operating on local and community band and limited television services are authorized by a license issued by the Telecommunications Secretariat.

The duration of the license is 5 years, renewable for equal periods, at the request of the interested party.

Telecommunications concessions and permits are extinguished by:

- deadline;
- renunciation;
- death of the concessionaire or dissolution or termination of the legal holder of a concession permit, as the case may be; and
- failure to publish in the Official Gazette the supreme decree granting or modifying the concession within 30 days of notifying the decree to the interested party.

2 What are the regulatory authorities and agencies that oversee telecommunication licensing, transactions and telecoms activities and what are their general responsibilities? Does regulatory treatment of telecoms providers differ depending on the type of service (eg, fixed line, wireless, satellite, subsea systems)?

The Telecommunications Secretariat (Subtel), a governmental and technical agency dependent on the Ministry of Transport and Telecommunications, is in charge of coordinating, promoting and developing telecommunications in Chile.

The agency's main functions are to propose national policies in telecommunication matters, according to government guidelines, control and direct their implementation, monitor public and private companies of this area in the country, controlling their compliance with the laws, regulations and relevant standards.

Moreover, in the case of public local and long-distance national and international phone services, excluding mobile phones, and in signal switching and/or transmission services provided as an intermediate service or as private circuits, there exists a special rating of the antitrust agencies – Competition Tribunal. As the conditions in the market are not sufficient to ensure a free pricing regime, the prices or fees of the qualified service will be set by the Ministry of Transport and Telecommunications with the participation of the concessionaire, in accordance with the rules and procedures outlined in the law. However, if conditions

change and antitrust agencies make a statement to that effect, the service will no longer be subject to pricing.

There are specific regulations depending on the kind of service, notwithstanding the general applicable framework of the telecommunications market, particularly regarding relations with its users.

3 Describe the main issues related to dispute resolution in the telecoms industry and how disputes with a regulator would be generally resolved.

The conflicts arising in the telecommunications market may be subject to resolution by administrative and/or judicial procedures.

Procedures related to the concession system – creation, modification, opposition from third parties – are overseen by the administrative authority (Subtel), but are subject to an eventual judicial review by the Court of Appeals of Santiago. Likewise, supervision, control and sanctioning procedures of the Authority are essentially administrative, but the law recognises the right to appeal against the decision before the courts of justice.

On the other hand, claims filed by, between or against concessionaires, users and individuals in general, relating to any matter issuing from the general law of telecommunications, of the regulatory bodies and of the plans and technical standards which compliance must be supervised by Subtel, will be resolved by this body, hearing the parties, notwithstanding the powers and responsibilities of other agencies in this field.

4 Do you expect any significant changes in the near future in the legislative scheme or in the governing authorities?

In order to increase competition in the market, it is deemed essential for the development of telecommunications that the convergence of services should be acknowledged, as this will allow integrating different technologies – for instance, fixed-mobile phones – and a greater efficiency in rendering telecommunication services, as each one of them will not necessarily continue being provided through different networks, resulting in lower prices for the consumer. It is highly likely that the current concession regime per type of service changes into a multi-service scheme.

All convergent reforms are aimed at eliminating the asymmetries between fixed and mobile networks, fostering the development of convergent services without territorial restrictions and with cost structures based on internet protocols, which will allow all Chileans to communicate across the country with local call costs, regardless of what part of the country they live in or what kind of phone or network they use. It is also expected that in the near future the law of digital television now under discussion in Congress will be approved.

On the other hand, from the standpoint of institutional reforms, the reformulation of the Subtel has been under study for some time and the creation of a Superintendency of Telecommunications is being proposed which will take over the supervision of the sector, as also the creation of a National Telecommunications Commission which will have a normative and regulatory role.

5 What significant telecom-specific international treaties is your country party to? Has your country made any commitments under the GATS/GATT regarding telecommunications or adopted the WTO Basic Telecommunications Agreement?

Subtel has historically participated in important international projects, whose ultimate aim is to favour in quality and prices Chilean users of telecommunications networks, particularly internet users. One of the important projects that made some progress during 2011 is the agreement for the interconnection of the different capitals of Latin America with a fibre optic ring, whose main goal is to link the principal capitals of the countries of the region. This will allow end users to access contents generated in the region and will also facilitate the joint negotiation of the different countries with operators of international links, which should result in lower internet prices.

In addition, progress has been made in the talks for the installation of new submarine cables to North America and Europe. These projects have progressed through the participation of the countries of the region and the support of institutions such as CEPAL and UNASUR.

To all this we must add the joint efforts of the Argentinian and Peruvian governments, who have endeavoured to create agreements that will reduce the high costs of international roaming. We have agreed to develop with Argentina a supplementary protocol to the Maipú Treaty of Integration and Cooperation to regulate wholesale tariffs between the two countries.

Finally, and with the aim of improving roaming services at a domestic level, in mid-2012 a resolution was published establishing that billing measures of voice and data services in international roaming should be the second and the kilobyte, respectively. Thus, it is set forth that operators may only charge for services actually rendered, and rounding up is prohibited. This measure became effective on 1 December 2012.

6 What trends were noticeable in the market in 2012 (eg, spectrum auctions, tower sharing, expansion of 3G/4G/broadband)? What trends do you expect to see in the next twelve months?

Reforms associated with the technological convergence that are designed to eliminate the asymmetries between fixed and mobile networks, promoting the development of convergent services without territorial restrictions and with cost structures based on multi-service networks which will permit all Chileans to communicate across the country at the cost of a local call, regardless of the part of the country in which they live or the kind of phone or network they use when making the call.

Due to the explosive growth of mobile internet and mobile broadband, Chile requires greater capacity and speed in wireless networks and optic fibre capillary networks around the country. That is why a contest was launched for spectrum in the 2.6 GHz band for the deployment of next-generation networks (commonly called 4G), a band composed of 120 MHz in total, segmented into three blocks of 40 MHz each (in an FDD scheme, with 20+20 MHz).

There has been an increase in demand, in opening of networks and technological innovation in advanced services. The progress of companies specialising in providing telecommunications infrastructure is also expected in the near future, particularly the deployment of antenna towers and mounts, pipelines and fibre optic, as is the case of infrastructure operators such as American Tower, Internexa and others. One of the most relevant changes aimed at streamlining the installation of infrastructure, promoting their being shared by mobile phone companies and the new infrastructure operators, which must be observed for deploying towers to support the antennae needed to provide mobile services, is the publication during 2012 of the “Tower Law” (Law 20.599 of 2012), which allows for greater efficiency and transparency in determining the places where powers can be installed and also establishes the possibility of compensation for the people who are or feel affected by a proposed installation of these infrastructures.

7 Is there a 'national broadband strategy' or strategy for public wi-fi access? Is there a tendency to bypass landline technology and go straight to wireless?

According to figures released by Subtel, related to broadband and mobile internet services, there has been an explosive growth of 49.2 per cent between January and December 2012, reaching a penetration of 22.8 connections per 100 inhabitants. According to the kind of device used to connect to the mobile internet, there is a significant growth in mobile navigation (via smartphones) which represent 76.6 per cent of 3G connections as of December 2012.

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Likewise, the contest rules encouraged sharing infrastructure with third parties which may, through Virtual Mobile Operator, have access to the spectrum and thus, increase competition in the market.

To the 2.6 GHz contest will be added, during 2013, a new spectrum contest in the 700 MHz band, according to the Asia-Pacific pipeline model (APT) which ensures greater economies of scale for access to devices and terminals.

Chile was the first country in the world to implement internet network neutrality, thus making this market transparent, facilitating its open development towards the future, with respect for intellectual property and ensuring, at the same time, the right of families to demand tailor-made parental control systems, to ensure the protection of children using the internet. According to a 2011 technical report by Subtel, Chile moved quickly to the average internet penetration of the OECD countries, set as a goal for 2014 by the government. In two years the internet penetration per capita tripled, increasing between December 2009 and December 2011 from 13.7 per cent to almost 30 per cent. At a household level, access increased from 37 per cent to 50 per cent. Today over 90 per cent of the populated national territory has options to communicate and connect to the internet. In late 2009, only 7.4 million Chileans used the internet. Now over 11 million Chileans use it.

Mobile phones meanwhile continue growing in terms of subscribers and traffic, in the first case at a rate of 7.7 per cent per year (2011–2012 interannual variation) and at an average yearly rate of 13.75 per cent, considering the last three years, reaching in December 2012 almost 24 million active phones, while fixed phones, particularly long distance calls, have fallen in stock and traffic.

Licensing and other regulation

8 How is the radiofrequency spectrum allocated and made available to the public? In particular, describe the licensing regime in your jurisdiction, including the procedures for a company to obtain permits for obtaining spectrum and performing telecoms services. May licences be traded or sub-licensed and if yes, under what conditions?

In Chile, General Telecommunications Law 18.168 ensures that the use and enjoyment of radio spectrum frequencies will be free and of equal access through essentially temporary telecommunications concessions, permits or licences, granted by the state. Any person may choose them in such form and manner as prescribed by law.

The radio spectrum is subdivided into nine frequency bands, which are designated by integers, in increasing order.

Concessions and permits may be granted without limitation as to amount or type of service or their geographic location, and there may exist more than one concession or permit of the same kind in the same geographic area. The granting of concessions and permits will be made in accordance with the procedures set by the General Law of Communications, its regulations and relevant technical standards. The Ministry must call a public tender for granting concessions or permits for telecommunication services if there is a technical standard, published in the Official Gazette, that only allows granting a limited number of concessions or permits. Concessions of telecommunications free-to-air or broadcasting services will be awarded by public tender. In the case of broadcasting services of minimal coverage, the Secretariat will regulate the best use of the radio spectrum they have been allocated, according to technical parameters, to avoid any interference with other telecommunications services.

9 What types of duties, royalties and taxes (other than routine administrative fees) must be paid by an operator to obtain and maintain telecommunications licences?

Concessionaires, permit holders and licensees of telecommunications services using the radio spectrum and requiring said authorisations to operate, as likewise broadcasting stations free to air, are liable to pay tax benefit rights, and their amount will depend on the kind of service in question.

- Holders of licence or permit, as applicable, of the amateur service to telecommunications will pay a single charge for the issuance and renewal of the license or permit, of approx. US\$24 and of US\$60 for Repeater Station permit.
- Licences granted to install and operate experimental stations and their renewal will be subject to a single charge of US\$24 approximately per station.
- Licences obtained for installing, operating and using stations of local or community bands and their renewal will be subject to a single charge of

approximately US\$15 per station.

- Concessionaires of radio broadcasting or free-to-air services will be subject to the payment of an annual fee which will be calculated according to the transmission power, emission bandwidth and frequency bands where each transmitter operates, when more than one of them is allocated. These rights may not exceed the amount of approximately US\$7,200 a year, except if it operates simultaneously with more than one band. Furthermore, each studio-plant link will be subject to the payment of approximately US\$80 a year.
- The operation and use of broadcast repetitive stations and free television broadcasting services will be subject to a yearly payment, which will be calculated on the basis of the video transmission power and frequency band on which each transmitter or repeater operates. These rights may not exceed approximately US\$28,800 a year for each transmitter or repeater. In addition, each studio-plant link will pay a maximum fee of approximately US\$360 a year and mobile television links will pay approximately US\$360 a year, per frequency band.
- Concessionaires or permit holders of fixed radio stations, single channels and multi-channels and of mobile single channels are subject to the payment of a yearly fee, calculated on the basis of operation frequency number, emission bandwidth, number of stations and transmission power. This fee may not exceed the amount of approximately US\$360 a year per transmitter.
- Concessionaires or permit holders of fixed or mobile services using multi-access technique will be subject to the payment of a fee, calculated on the basis of number of frequencies, transmission power and emission bandwidth. However, said fee may not exceed the amount of approximately US\$2,000 a year for each multi-access centre.
- Concessionaires or permit holders of satellite fixed or mobile services will be subject to the payment of a yearly fee, calculated on the bandwidth and emission power. This fee may not exceed the amount of approximately US\$800 a year per each transmitter or receiver.

10 What are the principal requirements to land a submarine telecoms cable, to traverse territorial waters in your jurisdiction?

The concessions are run by the Undersecretary of the Navy of the Ministry of National Defense (Decree No. 660 of Navy Maritime Concessions).

Progress has been made in the talks for the installation of new submarine cables to North America and Europe. These projects have progressed through the participation of the countries of the region and the support of institutions such as CEPAL and UNASUR.

11 Are data centres and data transmission subject to special regulation?

Pursuant to the Chilean Personal Information Protection Act (Law No. 19628) the main formalities with which the company should comply are:

- personal data may only be collected, stored and processed if the relevant person has expressly agreed to this in writing;
- the relevant person must be duly informed of the purpose for which his personal information will be collected, as well as of any possible dissemination of such information to the public;
- personal information may only be used for the purpose for which it was collected;
- personal information must be deleted if no longer valid and corrected if it contains mistakes, upon request of the person in question; and
- personal information must be stored using due care and diligence.

In general, to process/treat data in accordance with Chilean law requires the written consent of the individual (within the terms and conditions you can ask the express authorisation). Therefore, current law requires written authorisation for the treatment of personal data.

Currently the flow of personal data to other countries provided that the company complies with Chilean law is allowed in Chile. The Chilean law on data protection applies only to natural persons, not legal persons (be aware that there is a Bill to amend some of these matters in the Chilean Congress).

The Bill on the topic of transborder flows of personal data

The controller of a record or database may make transfer of personal data to entities not subject to Chilean laws, provided they comply with the same level of protection of this law. In this case, the parties of said transfer must establish contractual guarantees and obligations applicable to the recipient of the data, either as controller of the record or database or as data processor to make due compliance with the provisions of this law.

The party making the transfer to entities not subject to Chilean law must comply with the obligation that he has the specific consent of the personal data holder to transfer his data to an entity subject to other laws (specific consent to transborder flows of personal data).

The guarantees and obligations agreed shall not impair the rights established by this law and by the rules governing markets subject to special regulations to ensure that personal data collected from holders through entities subject to Chilean laws have the same level of protection granted by this ordinance.

Moreover, the party must always comply with what is set out in the bill: whenever the controller of the record or database obtains personal data from records or databases of third parties, whose transmission or transfer has been previously authorised by the holder, said person must have a log or record of transmissions or transfers allowing the holder requesting it to obtain express, precise, clear and unequivocal information about the data that is to be processed, the source of such data.

We cannot provide guarantees of what will be the final draft of the Bill amending the Chilean Privacy Act. We can point out, however, that under the current law, in the case of customers, it is enough that they consent to treat their personal data in general terms (which would include authorisation for transborder flows of personal data)."

12 Describe the general licensing and regulatory requirements for satellites in the telecoms industry (including with respect to earth stations, spectrum allocation and uplink and downlink frequencies).

All concessionaires and permit holders of telecommunications services will have access to the use of international satellite and cable systems, in equal technical and economic conditions, under the terms of the concession or permit, what the parties have agreed upon and subject to the provisions of the second paragraph of article 26 of the General Law of Telecommunications.

Concessionaires of telecom services may install their own systems or use those of other companies, according to the concessions they have been granted.

13 Has number portability been a concern in your jurisdiction? Has it had any effect on competition? How are numbers allocated?

All users of fixed, mobile and VOIP phones, whether post or prepaid, are entitled to use number portability.

In January 2012 number portability for mobile phones was implemented in Chile. Any user can move from one provider to another freely keeping his number, within certain administrative requirements. According to the latest report of Subtel, as of 30 March 2013, a total number of 1,004,883 fixed and mobile phone users chose to use the services of a new company, keeping their phone number.

Of the total transfers in both services, mobile phones have a total of 914,402 users who have moved to another company, of which 517,295 are prepaid subscribers and 397,107 postpaid ones. On the other hand, the total amount of transfers in local phones reached 90,481.

14 Are mobile virtual network operators allowed or common? Are there any impediments, restrictions or special regulations affecting MVNOS?

To date, Subtel has already authorised over 20 applications for mobile public service entities interested in entering the market as mobile virtual network operators (MVNO) and five more are in the pipeline, five of which are in operation.

Complying a ruling of the Supreme Court of Justice, dominant mobile operators had to submit an offer of facilities and/or resale of plans for MVNOS, based on general, standardised, objective and non-discriminatory criteria.

It is expected that within the next five years the existing MVNOS and the new ones that could be added to them, that require spectrum and other

networks to operate and primarily targeting niche market development, would generate at least 10 per cent of the total mobile communications traffic.

There is no special regulation for MVNOS, but the same quality standards of networks are applicable to them as well as complaints from mobile company users.

15 Is network-to-network interconnection and access mandatory? What is the pricing scheme? Are there certain criteria for qualifying?

According to the General Telecommunications Law it is an obligation of concessionaires of public telecommunications services providing long distance telephony, to establish and accept interconnections, according to technical standards, procedures and deadlines established by Subtel, in order that subscribers and users of public services of a same type may communicate with each other, within and outside the country.

The structure, level and indexing mechanism of the service rates that are affected are set by the Ministries of Transport and Telecommunications and of Economy, Development and Reconstruction every five years on the basis of incremental costs of the respective service development, taking into account the expansion plans of the companies to be implemented in a period not less than the next five years according to the expected demand.

The final rates will be maximum rates and may not discriminate between users of a same category. The final rates of each service will be indexed by its own index and expressed in terms of the prices of the main inputs of the respective service. This index will be determined in cost studies and should be constructed so that the cost structure on which the coefficients of variation of input prices are to be applied represents the cost structure of the efficient company defined for these purposes.

Competition and merger control

16 What is the current state of telecoms competition in your jurisdiction? Is the telecoms market dominated by a limited number of participants or is market-share more equally dispersed? Do you foresee contraction or consolidation in the industry in the near future due to the entry of additional operators?

Since their privatisation, telecoms have increased their service coverage, as well as their internal efficiency. After the deregulation of long distance services, rates fell sharply. Something similar happened with mobile phones, after the number of operators increased from two to four. However, an insufficient regulation of access rates to the fixed telephone network, together with the strong focus on this service, checked the new operators entering the industry. Changes in regulations, especially since 1994, have improved conditions for new operators. However, there are still difficulties in defining access rates. Finally, improvements in efficiency took their time in being transferred to consumers in the services where there was insufficient competition, generating cycles of high profits for providers of said services.

17 Are competition rules relevant for the telecoms industry in your jurisdiction? Describe any antitrust approvals or other competition law requirements that may apply in connection with telecoms investment.

The decisions of the competition authorities have been instrumental in the opening and further development of the telecommunications market in Chile.

18 Are there any rules specific to the telecoms industry for effecting mergers and acquisitions?

There are no specific rules applicable to the telecommunications industry. It may be useful for this purpose to bear in mind the document prepared by the National Economic Prosecutor called Internal Guidelines for the Analysis of Horizontal Mergers, of 2012, which provides guidelines on what said agency deems as concentration operations and which are the criteria, analytic framework and tools said agency will use when evaluating such an operation.

So far, a limitation has been the award or use of spectrum, admitting a maximum of 60 MHz.

Telecoms markets and consumers

19 Are prices for telecoms services regulated, or is it purely market-driven? Are there any differences between prices for consumers and businesses? Are retail or wholesale price controls imposed on any operator?

As provided in articles 24a and 25 of the Law, rates of the services provided by the Concessionaire must be set through the interconnections.

These services are as follows:

Using network services

Under the provisions of article 25 of the Law and article 51 of the Regulations for the Dialing and Hired Multicarrier System of the National and International Long Distance Telephone Service, services provided through interconnections to other concessions are subject to pricing, according to current regulations. The rates for these services shall be determined in accordance with the provisions of articles 30 to 30 J of this Law.

Service of access of communications to mobile network

The service of access of communications to mobile network is the use of different elements of the concessionaire's network by other concessionaires of public telecommunications service to end communications and of concessionaires of intermediate long distance services to end and start international long distance communications.

The network elements to be considered are those comprised between the respective network termination point and the mobile base station, including all the activities and equipment needed to provide the access service.

The concessionaire must justify in its Tariff Study the inclusion of costs associated with the provision of access service, which must be fully justified.

Interconnection service in network termination points and associated facilities

According to the provisions of articles 24^a paragraph 2 and 25 of the Law, and article 29 of the Regulations for the Dialing and Hired Multicarrier System of the National and International Long Distance Telephone Service, the Concessionaire must offer, give and provide to all concessionaires of public telecommunications service that apply and carriers, the same kind of accesses and connections in the network termination points.

The interconnection service in the network termination points and associated facilities are all the benefits required by the concessionaires to render the interconnections fully operational. The following are to be outlined among these benefits:

- connection to the network point of termination;
- adjustment of civil works;
- use of physical space and security;
- use of electricity;
- air conditioning;
- traffic routing of interconnected concessionaires; and
- network adjustment to incorporate and enable the carrier code.

Facilities necessary to establish and operate the dialing and hired multicarrier system

Administrative functions delivered to carriers for communications of international long distance telephone service

- Measurement;
- valuation;
- billing;
- collection ;
- collection balances management; and
- facilities for establishing and operating the hired multicarrier system.

Information service to carriers

- Information on updates and modification of telephone networks; and
- information on subscribers and traffic.

20 Describe recent efforts to expand the telecoms infrastructure in your jurisdiction. How have they been funded (public, private, public-private partnerships, etc)? Have you noted any trends (eg, tower sharing, fibre optic cable installation) or any notable issues in connection with expansion?

The main effort to expand the telecommunications structure in Chile is Law 20599, of 2012, Regulating the Installation of Emission and Transmission Antennas of Telecommunications Services. This body of law enshrines the mandatory co-location of existing infrastructure, establishing the shared use of the telecom structure of public or intermediate service concessionaires by another telecom concessionaire in order that it may install its own equipment in exchange for remuneration.

Voluntary co-location existed in the market prior to the entry in force of the law.

Nevertheless, the new law on antennas recognises that the deployment of antenna towers in the past generated impacts on the urban landscape and provides retroactive mitigation measures on the existing towers park, but exclusively in two cases:

- in areas defined by the law as tower-saturated areas, ie, areas where there are more than two antenna support towers within 100 metres; and
- in territories defined by the law as sensitive areas, areas where there are schools, kindergartens, hospitals or clinics, nursing homes and other similar areas that meet the specific definition of sensitive area established by Subtel as enshrined in the law, and that have also been formally identified by the municipalities within their respective communes.

These limitations constitute a constraint to the construction of new infrastructure affecting new participants and competition.

21 Have telecoms operators in your jurisdiction adopted 'convergence' (eg, triple play) in respect of their market offerings? If yes, what is the current state of play in the market? Are cable TV operators offering telephony services? Has network partnering been adopted by any operators in the market to increase their viability?

In recent years, most telecom operators in Chile have chosen to market their local telephone, TV and Internet services, the so-called triple play. Cable operators offer telephone services and viceversa. In general, existing operators use their own means, without recurring to third parties.

In order to increase competition in the market, it is deemed essential for the development of telecommunications that the convergence of services should be acknowledged, as this will allow integrating different technologies –for instance, fixed-mobile phones – and a greater efficiency in rendering telecommunication services, as each one of them will not necessarily continue being provided through different networks, resulting in lower prices for the consumer. It is highly likely that the current concession regime per type of service changes into a multi-service scheme.

22 Are there any issues regarding availability of suitable spectrum for wireless broadband and other emerging uses? Are there any upcoming auctions? Has your jurisdiction introduced 3G/4G technology? Are there spectrum caps in operation? If so, what effect are these having on the market?

Due to the explosive growth of mobile internet and mobile broadband, Chile requires greater capacity and speed in wireless networks and fibre optic capillary networks around the country. That is why a contest was launched for spectrum in the 2.6 GHz band for the deployment of next-generation networks (commonly called 4G), a band composed of 120 MHz in total, segmented into three blocks of 40 MHz each (in an FDD scheme, with 20+20 MHz).

There has been an increase in demand, in opening of networks and technological innovation in advanced services. The progress of companies specialising in providing telecommunications infrastructure is also expected in the near future, particularly the deployment of antenna towers and mounts, pipelines and fibre optic, as is the case of infrastructure operators such as American Tower, Internexa and others. One of the most relevant changes aimed at streamlining the installation of infrastructure, promoting their being shared by mobile

phone companies and the new infrastructure operators, which must be observed for deploying towers to support the antennae needed to provide mobile services, is the publication during 2012 of the “Tower Law” (Law 20.599 of 2012) which allows for greater efficiency and transparency in determining the places where towers can be installed and also establishes the possibility of compensation for the people who are or feel affected by a proposed installation of these infrastructures.

23 Are significant portions of your jurisdiction (eg, rural) underserved? If so, is there a focus on rural expansion? Are there mandatory requirements for rural or universal service?

There is a fund for the development of telecommunications, dependent on the Ministry of Transport and Telecommunications, in order to promote an increased coverage of telecom services, preferably in rural areas and low-income urban areas.

The fund is constituted by the contributions annually allocated to the budget law of the public sector, besides other contributions it may receive.

The fund is administered by the Council for the Development of Telecommunications, composed of the Minister of Transport and Telecommunications who will chair it, and by the Ministers of Economy, Development and Reconstruction, the Minister of Finance, the Minister of Planning and Cooperation or their representatives and by three professionals with experience in the field of telecommunications and related to the various regions of the country, to be appointed by the President of the Republic.

24 Briefly describe the importance of social media in your jurisdiction? Has your jurisdiction addressed 'net neutrality'?

Chile was the first country in the world to implement internet network neutrality, thus making this market transparent, facilitating its open development towards the future, with respect for intellectual property and ensuring, at the same time, the right of families to demand tailor-made parental control systems, to ensure the protection of children using the internet.

Regulation N° 368 of Network Neutrality

The concessionaires of public telecommunications service rendering service to internet service suppliers (ISPs) as well as these suppliers, understanding as such, any natural or legal person providing commercial services of connectivity between the users or their networks and the internet:

- May not arbitrarily block, interfere with, discriminate, hinder or restrict the right of any Internet user to use, send, receive or offer any lawful content, application or service through the internet, as well as any other kind of lawful activity or use conducted through the network. In this sense, they must provide to each user a service of access to the Internet or of connectivity to the ISP, as appropriate, without making arbitrary distinctions concerning contents, applications or services, based on the source or ownership thereof, considering the different configurations of the Internet connection under the existing contract with the users.

Nevertheless, concessionaires of public telecommunications service and ISPs may take the measures or actions necessary for traffic and network management, in the exclusive scope of activity they have been authorised, provided that their purpose is not designed to perform actions that affect or may affect competition. In the event that ISPs take measures or actions for traffic and/or network management, this should be informed to the users through a clear and intelligible publication according to the terms stated in article 5.

- They may not limit the right of a user to incorporate or use any kind of instrument, device or appliance in the network, provided they are legal and do not damage or harm the network or the quality of the service.
- They shall provide, at the expense of the users requesting them, parental control services for content that violates the law, ethics or morality, provided the user receives information in advance and in a clear and precise manner about the scope of such services.
- They shall publish on their websites all information related to the features of the internet access offered, its speed, link quality, making a distinction

between domestic and international connections, as well as the nature and guarantees of the service.

25 Provide an overview of privacy protection accorded to telecoms end-users.

Regulation No. 368: Concessionaires and suppliers will seek to preserve user privacy, virus protection and network security. They may likewise block access to certain contents, applications or services, only at the express request of the user and at his expense.

Furthermore, pursuant to the Chilean Personal Information Protection Act (Law No. 19628) the main formalities with which the company should comply are:

- personal data may only be collected, stored and processed if the relevant person has expressly agreed to this in writing;
- the relevant person must be duly informed of the purpose for which his or her personal information will be collected, as well as of any possible dissemination of such information to the public;
- personal information may only be used for the purpose for which it was collected;
- personal information must be deleted if no longer valid and corrected if it contains mistakes, upon request of the person in question; and
- personal information must be stored using due care and diligence.

In general, to process/treat data in accordance with Chilean law requires the written consent of the individual (within the terms and conditions you can ask the express authorisation). Therefore, the current law requires written authorisation for the treatment of personal data.

Currently the flow of personal data to other countries provided that the company complies with Chilean law is allowed in Chile. The Chilean law on data protection applies only to natural persons, not legal persons (be aware that there is a Bill to amend some of these matters in the Chilean Congress). The Bill on the topic of transborder flows of personal data states at this time that the controller of a record or database may make transfer of personal data to entities not subject to Chilean laws, provided they comply with the same level of protection of this law. In this case, the parties of said transfer must establish contractual guarantees and obligations applicable to the recipient of the data, either as controller of the record or database or as data processor to make due compliance with the provisions of this law. At this time, we cannot provide guarantees of what will be the final draft of The Bill amending the Chilean Privacy Act. By contrast, we can point out that under the current law, in the case of customers, it is enough that they consent to treat their personal data in general terms (which would include authorisation for transborder flows of personal data).

We cannot provide guarantees of what will be the final draft of the Bill amending the Chilean Privacy Act. By contrast, we can point out that under the current law, in the case of customers, it is enough that they consent to treat their personal data in general terms (which would include authorisation for transborder flows of personal data)."

26 Is there any domestic censorship of internet or other media content? Are there any privacy agencies or regulators or set procedures, or it is largely self-regulated? Are there particular laws that impose liability on operators, or conversely act as a 'liability shield', for such operators?

Will correspond to the National Council on Television to ensure the proper functioning of television services, and, to this end, will have its supervision and control, regarding the broadcasting content in accordance with the rules of this law. Proper functioning of these services means: the enduring respect, through its programming, of the cultural and moral values of the nation, the dignity of individuals, the protection of the family, pluralism, democracy, peace, environmental protection, and spiritual and intellectual formation of childhood and youth within the value of this framework.

The television service concessionaires shall establish procedures consistent with the law and to the General Standards issued by the Council and provide the monitoring and safeguard mechanisms that effectively prevent the occurrence of excessive violence broadcasts, truculence, pornography involving children or teenagers in conflict with the moral actions or decency.

Pay TV services offer to its subscriber's technological tools to exercise effective parental control. The TV channels have bands by ages but there are technological means to block the channels at certain times (this only applies to pay-TV services).

Foreign participation

27 Who are the most significant foreign participants in your country in the telecoms sector?

- Grupo Telefónica (Spain);
- Grupo América Móvil (Mexico);
- Liberty Global (the United States); and
- Nextel (the United States).

28 Describe any legal limitations on the types of companies that can enter into telecommunications transactions or possess telecommunications licences. Are there any local ownership requirements or restrictions on foreign investment in telecommunications activities? Are there any significant regulations regarding domestic participation or labour laws relating to foreign workers?

Only concessionaires of intermediate telecom services constituted as open corporations, which may be subsidiaries or affiliates of concessionaires of public telecom services, may install, operate and use means to provide switching functions or long distance transmission for the public telephone service, provide international and national long distance telephone services and establish agreements with foreign correspondents for said purpose.

The presidents, managers, administrators and legal representatives of a free-to-air broadcasting concessionaire must be Chilean. In the case of boards, they may be integrated by foreigners, provided they do not constitute a majority.

According to the Chilean Labour Law, if a company has more than 25 employees, 85 per cent of its staff must be Chilean. If it has less than 25 employees, there is no limitation. The calculation of this percentage must consider all employees of the company in the country and exclude technical specialists which cannot be replaced by Chilean personnel. A worker is considered Chilean if he or she has a Chilean spouse or children, if they are widow or widower of a Chilean citizen, or if he or she has lived in the country for over five years.

28 Describe any legal limitations on the types of companies that can enter into telecommunications transactions or possess telecommunications licences. Are there any local ownership requirements or restrictions on foreign investment in telecommunications activities? Are there any significant regulations regarding domestic participation or labour laws relating to foreign workers?

See answers to questions 28 and 30.

29 Are there any limitations on foreign ownership in the telecoms sector? Are there differing procedures for foreign owners?

According to article 21 of the General Law of Telecommunications, only private or public legal entities, established in Chile and domiciled in the country may be holders of concessions or make use of them, in any capacity. If said requirement is met, there are no different treatments regarding national investors.

30 How are national security concerns in the telecoms sector addressed? Are there restrictions on the nationality of equipment manufacturers?

Telecommunications for the exclusive institutional use of the Armed Forces, Carabineros de Chile (Chilean Police) and Investigative Service of Chile, to fulfill their intended purpose, will not require a concession or permit and will not be subject to expiry.

Maritime telecommunications services (fixed or mobile), to which the Radio Regulations of the International Telecommunication Union refer to, will be installed, operated, authorised and supervised by the Chilean Navy.

There are no restrictions regarding the nationality of the equipment manufacturers.

Financing and bankruptcy

31 What types of financial investors are most active in the telecoms market in your jurisdiction (eg, commercial banks, private equity, multilateral institutions)? Has there been a shift in the sources of funding over recent years due to economic uncertainty or otherwise? Where do you expect to see the bulk of financing come from in the next 12 months?

According to a Subtel report of 2011, sector investment reached US\$2.408 million in 2011, the highest figure in the last eight years, marking a growth of 25.4 per cent compared to 2010, confirming the recovery of investments during the 2010–2011 period compared with the 2008–2009 period, where there had been a decline from previous periods. Indeed, the accumulated 2010–2011 investment expanded 37.5 per cent compared to 2008–2009 and this trend is projected to continue in the coming years.

The growth of investment in telecommunications during 2011 was mainly driven by mobile services, both of voice and of the internet, and by the implementation of improvements in capacity, coverage and quality of service in networks, combined with the new regulatory requirements established by the government, particularly in the context of emergency communications protocols, the deployment of infrastructure in remote areas and other important reforms such as number portability.

To this new competitive scenario we may add the entry of new operators, due to structural changes in the market, creating greater competition. As projected for 2012, the number of companies in the mobile phone market and mobile internet has increased from three to nine competitors, due to the entry into business of new operators with network infrastructure, such as VTR and Nextel, and the incorporation of MVNOs such as Virgin Mobile, Gtd Móvil and Netline Mobile.

32 Is there any public funding of infrastructure by local export credit agencies or development financing institutions? How does this mesh with private funding?

There is a fund for the development of telecommunications, dependent on the Ministry of Transport and Telecommunications, in order to promote an increased coverage of telecom services, preferably in rural areas and low-income urban areas.

The fund is constituted by the contributions annually allocated to the budget law of the public sector, besides other contributions it may receive.

The fund is administered by the Council for the Development of Telecommunications, composed of the Minister of Transport and Telecommunications who will chair it, and by the Ministers of Economy, Development and Reconstruction, the Minister of Finance, the Minister of Planning and Cooperation or their representatives and by three professionals with experience in the field of telecommunications and related to the various regions of the country, to be appointed by the President of the Republic.

Subtel, based on the specific applications of telecommunication projects it receives, will develop an annual programme of projects eligible for subsidies, which it will submit to the Council, together with their technical and economic evaluations and their social priorities. Subtel may also consider within its annual programme projects to be tendered.

33 Briefly describe any legal considerations of particular importance in your jurisdiction in connection with a cross-border financing of telecoms companies.

According to the Chilean Foreign Investment Committee, although there are other mechanisms that can be used by foreign investors, such as chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations, more than 81 per cent of materialised foreign investment between 1990 and 2004 entered the country through Decree Law (DL) 600, with a total of US\$53.6 billion. Based on constitutional principles, the Foreign Investment Statute guarantees non-discriminatory and non-discretionary treatment of foreign investors. The former assures all people, regardless of their nationality, "to be treated by the State and its bodies in economic matters without arbitrary discrimination".

Therefore, foreign investors enjoy the same rights and guarantees as local investors. The principle of non-discretionary treatment governs the activities in every economic sector and entails the existence of clear, well-known and transparent rules, which assure foreign investors they will be treated fairly and impartially.

Any foreign individual or legal entity, as well as Chileans with residence abroad, can invest through DL 600. Under this mechanism, investors enter into a legally binding contract with the Chilean state, which cannot be modified unilaterally by the state or by subsequent changes in the law. However, investors may, at any time, request the amendment of the contract to increase the amount of the investment, change its purpose or assign its rights to another foreign investor.

DL 600 guarantees investors the right to repatriate capital one year after its entry and to remit profits at any time. In practice, the one-year capital lock-in has not represented a restraint since most productive projects – in areas such as mining, forestry, fishing and infrastructure – require more than a one-year start-up period. Once all relevant taxes have been paid, investors are assured access to freely convertible foreign currency without any limits on the amount, for both capital and profit remittances. In addition, they are guaranteed the right of access to the formal exchange market. The repatriation of all capital invested is devoid of any tax, duty or charge up to the amount of the originally materialised investment. Only capital gains over that amount are subject to the general regulations contained in the tax code.

The DL 600 contract acknowledges as foreign investment:

- Freely convertible currency that can be exchanged at the most favourable rate that foreign investors can obtain from an entity authorised to operate in the Formal Exchange Market.
- Tangible assets, in any form or condition brought into the country according to general import regulations, without exchange coverage. The value of these goods will be determined using general procedures applied to imports. These tangible assets include, among others, machinery or equipment used in productive processes.
- Technology, in any form susceptible to be capitalised, which will be appraised by the Foreign Investment Committee according to its real international market value, within 120 days after the foreign investment application is submitted. If the appraisal is not carried out, the value assigned shall be that estimated by the investor in an affidavit. In previous cases, independent consultants have performed this task.
- Credits associated to foreign investment: The general regulations, terms, interest and other modalities of foreign credit contracts, as well as surcharges related to total costs to be paid by the debtor, including commissions, taxes and expenses, shall be those authorised by the Central Bank of Chile.
- Capitalisation of foreign loans and debts, in freely convertible currency, whose contract has been duly authorised by the Central Bank Under DL 600. Investors can increase the capital of the company which received the investment through both the capitalisation of credits made under chapter XIV and the credits derived from current imports and pending payments.
- Capitalisation of profits transferable abroad: DL 600 allows capital increases of the company receiving the investment through the capitalisation of transferable profits.

Foreign investors may request a maximum time-limit of three years to materialise their contributions. Under article 11 bis of DL 600, investments of not less than US\$50 million for industrial or non-mining extractive projects can request a time-limit of up to eight years. In the case of mining projects, the time-limit is eight years but, if previous exploration is required, the Foreign Investment Committee may extend it to up to twelve years.

Most investment projects require additional permits and/or must fulfill other requirements besides those set forth in DL 600. All investment projects, both local and foreign, must comply with the country's local and sector-specific legislation, at the national, regional and municipal levels.

It is worth noting that, besides the Foreign Investment Committee's approval, some projects require additional information or authorisation, which must be obtained from other competent authorities. Only as an example, we can mention that when an application for investments in the mining sector is

presented under DL 600, the Foreign investment Committee asks the Chilean Commission of Copper (Cochilco) to issue a report on the project; the Fishing Superintendence reports on activities in that sector; the Banks and Financial Institutions Superintendence must authorise operations in the financial banking area; and the Securities and Exchange Commission reports on activities in the insurance and investment funds fields.

A concession granted by Subtel is required in order to install, operate and run public telecommunication services; intermediate telecommunication services through physical facilities and networks designed for this purpose; and radio sound broadcasting services. Complementary services, such as telephone banking or financial data over the telephone, do not require a concession or permit, although a technical ruling is required when equipment is connected to public telecommunications networks.

In the case of the environmental assessment of projects, it is based on the Environmental Assessment Service. Its main function is to introduce the use of modern technology and manage the environmental management tool called System of Environmental Impact Assessment (SEIA), which is based upon the environmental assessment of projects adjusted as provided in the existing standard, promoting and facilitating citizen participation in the evaluation of projects.

The role of this service is to standardise the criteria, requirements, conditions, background information, certificates, procedures, and technical requirements of an environmental nature established by relevant ministries and other state entities, by establishing processing guidelines.

The modernisation of the system aims to establish common criteria to evaluate each type of project, thus ensuring the protection of the environment in an efficient and effective manner.

In line with its commitment to free-market economic policies and free trade, Chile does not use tax incentives to support productive activities or to attract new investment. However, it does provide certain inducements for investments in some isolated geographic regions and new industries, particularly those in the technology field.

Investors can, for example, tap into government schemes to promote workplace training and to increase industrial productivity. All these schemes, in the form of grants and tax rebates, are available equally to both local and foreign investors and are part of a wider government strategy designed to increase competitiveness by extending the benefits of economic growth to all areas of the country, promoting education and training and encouraging technological innovation.

34 What conditions precedent would you recommend a lender include in their loan documentation (eg, regulatory approval)?

Chilean law allows the creation of security interests over different type of assets and rights held by project companies, excluding for certain assets listed in the Civil Procedure Code. For example, working tools and assets employed in services that may not be stopped with serious harm to public transportation or health, household assets, salaries and child support up to a certain amount. The main security interests over assets are obtained in Chile through mortgages and pledges.

35 What is the most common method for a lender to take collateral security in a telecoms acquisition or general purpose financing (both legal documentation and type of collateral)? Are there methods of granting security that are more beneficial (eg, trusts versus pledges)?

The Chilean Bankruptcy Act and the Chilean Civil Code and other special laws, describe a system of categories among creditors depending on the nature of their credits and the guarantees involved.

Consequently, the above depends on the type of warranty. Now if with this there is an amendment of the concession items shall be reported to Subtel, prior to its execution. In addition, any modifications required by the technical regulations require prior approval by Subtel.

36 Describe any limits on, or requirements with respect to, a lender's ability to take a valid and enforceable security interest in telecommunications assets (including spectrum, if permitted) or licences. How would such liens be perfected (if at all) to ensure a lender's priority with respect to those assets?

It should be noted that the Central Bank has the right to restrict access to the formal exchange market – made up by banks and other authorised dealers – if adverse macroeconomic conditions make this necessary. However, DL 600 investors are exempt from these restrictions and their right to access the market in order to repatriate profits or capital is not affected.

A concession granted by Subtel is required in order to install, operate and run public telecommunication services; intermediate telecommunication services through physical facilities and networks designed for this purpose; and radio sound broadcasting services. Complementary services, such as telephone banking or financial data over the telephone, do not require a concession or permit, although a technical ruling is required when equipment is connected to public telecommunications networks.

The Chilean Bankruptcy Act and the Chilean Civil Code and other special laws, describe a system of categories among creditors depending on the nature of their credits and the guarantees involved.

Consequently, it will depend on the kind of guarantee. However, if due to this, there should be a change in the elements of the concession, they must be reported to Subtel, prior to its execution. Notwithstanding the above, said changes will require Subtel's approval when it is required by the technical regulations.

37 Are there any significant restrictions that may impact the timing and value of enforcement with respect to security interests in telecommunications assets or licences – such as a requirement for a public auction or the availability of court blocking procedures to other creditors or the company (or its trustee in bankruptcy) or additional regulatory approvals associated with enforcement?

Under Chilean law, to foreclose a mortgage or guarantees, certain prior procedures before Chilean courts must be met. The corresponding obligations will be paid with the proceeds from the sale of collateral at a public auction. If there are no bidders at the public auction, the property may be awarded to the creditor.

Banks and mutual funds neither are nor subject to the general procedures of bankruptcy, but to settlement do procedures under banking laws or rules applicable to funds (eg, pension funds and investment funds).

Filing for bankruptcy should contain, among other things, the appointment of a provisional liquidator and an alternate to act in the bankruptcy proceedings until a permanent receiver is appointed by the creditors' committee and the seizure of the debtor's assets.

Filing for bankruptcy has among other effects, the following ones: the debtor's assets may no longer be managed by the debtor, loans are fixed at the time of the bankruptcy filing, claims against the debtor become due and payable (regardless of the contractual payment terms); with some exceptions, all new or existing litigation is consolidated in the court hearing the bankruptcy proceedings.

38 Are there any bankruptcy rules in your jurisdiction with respect to the redistribution and sale of telecoms assets and licences?

If there should be a change in the elements of the concession, they must be reported to Subtel, prior to its execution. Notwithstanding the above, said changes will require Subtel's approval when it is required by the technical regulations.

Filing for bankruptcy has among other effects, the following ones: the debtor's assets may no longer be managed by the debtor, loans are fixed at the time of the bankruptcy filing, claims against the debtor become due and payable (regardless of the contractual payment terms); with some exceptions, all new or existing litigation is consolidated in the court hearing the bankruptcy proceedings.

Moreover, the right of creditors to bring an action for the recovery of their claims is suspended. Proceedings against a debtor in bankruptcy initiated before the declaration accumulate to bankruptcy proceedings (with some exceptions).

Overall, according to the bankruptcy law, it is allowed to submit agreement proposals to restructure the debtor's obligations and avoid bankruptcy.

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