

Telecoms and Media

An overview of regulation in
43 jurisdictions worldwide

2014

Contributing editors: Laurent Garzaniti and Natasha Good



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Telecoms and Media 2014

**Contributing editors:
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Freshfields Bruckhaus Deringer LLP**

Getting the Deal Through is delighted to publish the fully revised and updated fifteenth edition of *Telecoms and Media*, a volume in our series of annual reports that provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 43 jurisdictions featured. This year's edition also benefits from an expanded overview section, with two new chapters covering Network Sharing, and Convergence in the US Telecommunications and Media Industry.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. Once again, regulatory agencies have assisted us in the verification of the factual information relating to their jurisdiction and we acknowledge their cooperation on page 14. We would also like to extend special thanks to contributing editors Laurent Garzaniti and Natasha Good of Freshfields Bruckhaus Deringer LLP for their assistance with this volume.

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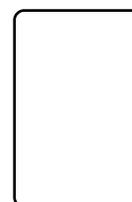
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Communications policy

1 Regulatory and institutional structure

Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

In connection with the regulatory framework for the communications sector in Chile, the primary law to take into account is the General Telecommunications Law (GTL), which mainly rules the following matters:

- its general rules contain a concept of telecommunications, the principle of free and equal access to telecoms, a classification of telecommunications services, a general regulatory framework for the installation, operation and exploitation of such services and rules for the interpretation, application and control of the GTL and its complementary rules;
- telecoms concessions, permits and licences needed to provide telecoms services and the requirements and procedures applicable to their granting;
- tariffing procedures for certain telecoms services;
- the fees for the use of spectrum; and
- breaches and sanctions.

The Ministry of Transport and Telecommunications (MTT) through the Undersecretary of Telecommunications (Subtel) is in charge of proposing and developing telecoms policies in Chile, which must then be approved by the President. Subtel's policy development procedure is the standard procedure contemplated in the Chilean law for the issuance of any regulation. Telecoms policies, therefore, are materialised by the authority through the issuance of supreme decrees or exempt resolutions. Although the telecoms authorities are not obliged to do so, they often issue notices of inquiry or notices of proposed rulemaking and consider the opinion of the market players before adopting new policies.

The telecoms concessions may be granted only to private or public legal entities duly incorporated and domiciled in Chile. There is no restriction or limitation, however, on the participation or ownership of foreign investors in Chilean telecoms concessionaires, provided their investments comply with Chilean laws and regulations. For exceptions and more information on this issue, see question 14.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

As a general rule, to provide any telecommunications services, it is necessary to obtain a concession, permit or licence from the telecommunications authority, which are granted to the interested party on a 'first come, first served' basis. However, if there is a technical rule that allows only a limited number of concessions or permits of a certain service (eg, mobile telephony and other wireless services), the

relevant concessions and permits shall be granted through a public bidding process.

The GTL classifies the different telecommunications services by describing their purpose (rather than its features, capabilities or platforms through which they are supplied), each of which may have different specific regulations and requirements. The classification of telecommunications services according to the GTL includes the following:

- Public telecommunications services (PTS), which are services destined to satisfy the telecommunications needs of the community in general (fix telephony, mobile telephony, trunking, etc). These services must be designed in order to be interconnected with other PTS.
- Limited telecommunications services (LTS), which are services aimed at satisfying specific telecommunications needs of determined companies, entities or persons who have previously requested and agreed the provisions of the services. This kind of service may not give access to the public telecommunications networks.
- Intermediate telecommunications services (ITS), which are services provided through facilities and networks, which are aimed at satisfying the transmission and switching needs of other telecommunications concessionaires or permissionaires and/or at providing long-distance telephone services to the general community.
- Complementary telecommunications services (CTS), which are not telecommunications services in the strict sense of the definition but are additional features provided by PTS concessionaires or any other third party through the connection of equipment to the public networks.

Fixed, mobile and satellite services are generally considered by Chilean telecoms regulations as public, intermediate or limited telecoms services, as the case may be. Therefore, except for the technical rules established specifically for each of them and for the circumstance where, in certain conditions, the tariffs of fixed local telephone services may be set by the authorities, all such services are subject to the general rules contained in the GTL and its ancillary and complementary regulations.

The installation, operation and exploitation of PTS and ITS require the prior obtaining of a concession granted through a supreme decree issued by the MTT. These concessions have a 30-year term and may be renewed for equal periods at the request of the corresponding concessionaire. Only legal entities duly incorporated and domiciled in Chile may be granted this kind of concession (there is no restriction, however, for these entities to be partially or wholly owned by foreign capitals).

The installation, operation and exploitation of LTS requires the prior obtaining of a permit granted through an exempt resolution issued by Subtel. These permits have a 10-year term and may also be renewed for equal periods at the request of the corresponding

permissionaire. LTS permits that do not use the radio electric spectrum are granted for an indefinite period of time. Please note, however, that no permit is required in case of LTS whose transmissions do not exceed the limits of the real estate where they are installed or that exceed such limits using only infrastructure of ITS concessionaires.

The installation, operation and exploitation of CTS does not require any previous concession, permit, agreement or authorisation from any PTS concessionaire or governmental authority (including Subtel). Nevertheless, the equipment that the CTS operator connects to the public networks must comply with technical regulations issued by Subtel and shall not alter the essential characteristics and capabilities of the networks to which such equipment is connected. For such reason, prior to starting the provision of complementary services, Subtel shall issue a resolution stating that the equipment of the respective CTS operator complies with the above-mentioned technical regulations. Subtel shall issue the resolution within 60 business days from the reception by Subtel of the respective request from the interested party. Otherwise it shall be understood that the respective CTS operator is authorised to start its operations by the mere effect of the law.

Even though procedures for the granting of telecoms concessions, permits and licences are clearly defined in the GTL and its regulations, the duration of such procedures depends on a series of variables that may differ from one specific case to another (particularly when there is opposition from third parties, which sometimes may need to be resolved by the courts). In standard cases, however, the granting of PTS or ITS concessions may take between three and eight months. The granting of LTS permits (ie, for cable television) may take between two and six months.

Telecoms concessions and permits are generally granted on a free basis. However telecoms concessions and permits may be subject to auction by the telecoms authorities only in cases when the relevant concessions must be granted through a public bidding process due to the fact that there is a technical rule that allows only a limited number of concessions or permits, and two or more bidders present equally suitable offers.

The GTL also provides that concessionaires, permit holders and holders of telecoms licences that use the radio electric spectrum are subject to an official fee or duty for the use of the spectrum. This fee is charged on an annual basis according to the Collection Regulations, depending on several factors, such as type of concession, permit or licence, portion of spectrum granted and service area that has been authorised. According to the GTL, a payment delay of more than six months is punishable by Subtel with the cancellation of the corresponding concession, permit or licence.

Regarding mobile services, in September 2000, Subtel issued a technical rule reserving the 1,710–1,770MHz and 2,110–2,170MHz bands for 3G mobile services to be granted through a public bidding process.

On 27 January 2009, the Supreme Court ruled that no operator may concentrate more than 60MHz in any band assigned for public mobile telephony services as a consequence of the 3G public bid. If any operator receives 3G spectrum and exceeds the 60MHz cap, the operator will have to surrender the spectrum either by returning it to the state or through a sale by public auction.

The general terms and conditions for the public bid were issued by Subtel in April 2009, confirming the spectrum cap fixed by the Supreme Court and regulating the assignment of three spectrum blocks of 30MHz each with national coverage (90MHz overall). Considering that there were already three operators which could not increase their spectrum due to the cap (Entel had already 60MHz and Movistar and Claro 55MHz each), this became an opportunity for new entrants.

The public bid took place during 2009 and, after a public auction, Nextel obtained two concessions of 30MHz each and VTR (a subsidiary of Liberty Media) obtained the remaining 30MHz,

permitting the entrance of two new competitors into the market of next generation mobile services.

In 2012 a public bidding process took place in Chile for the granting of public telecommunication service concessions based on 4G technology for the provision of fixed or mobile data transmission public services in the 2,505–2,565MHz and 2,625–2,685MHz frequency bands. After a public auction, Subtel announced that Claro, Entel and Movistar (the incumbents that participated in the bidding process) were each awarded one of the three 40 MHz spectrum blocks granted through this public bid (blocks 'A', 'B' and 'C' respectively).

Finally, on 1 October 2013, Subtel announced a new public bid process for the distribution of the 700MHz band that will be freed up as a consequence of the digital television switchover. To date, three companies (Claro, Entel and Movistar) have presented proposals and are currently in a technical tie-up for the awarding of the three blocks into which the 700MHz band is divided.

Subtel must now review and confirm the scores of each company and if the technical tie-up persists, the bands will be awarded based on the economic offers submitted by the companies in sealed envelopes on 13 January 2014.

3 Flexibility in spectrum use

Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

The GTL establishes an equal and non-discriminatory right to use spectrum, but always through a telecommunications concession, permit or licence. Radio frequency (RF) concessions, permits and licences describe the specific service for which they are granted and, therefore, the spectrum is always permitted to be used for specific purposes. For details on this, see question 2.

The RFs assigned to a particular operator may not be traded or transferred separately from the concession or permit to which the respective RFs are embedded. However, Subtel and Chile's antitrust authorities are currently adopting some measures in order to create a 'secondary market' for the transfer of mobile telephony radio-electric spectrum. For more details, see question 12.

Telecommunications concessions (including spectrum or not) may be transferred, assigned or leased only with the previous authorisation of Subtel, which may not be denied without reasonable cause. In the case of radio broadcasting telecommunications services (RBTS) concessions, such authorisation cannot be granted within two years from the date of the legal initiation of the services under the concession.

The GTL provides that the assignee of a concession or permit is subject to the same obligations of the former owner. The assignee is bound by the technical and economic project originally submitted by the assignor to Subtel and approved by it. But the assignee may request the amendment of technical and economic projects at any time.

4 Ex-ante regulatory obligations

Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

In general, the provision of any communications service, except for internet, requires authorisation from the MTT or Subtel. The authorisation and application processes vary and depend on the type of service the applicant wants to provide. For details on this, see question 2.

The general rule regarding telecommunications tariffs or fees is that they may be freely established by the respective PTS or ITS service providers without prejudice of the agreements between such providers and their subscribers.

More specifically, four main markets or segments have to be analysed from this perspective:

Telephony

Numbering Technical Fundamental Plan

Providers of public telephone services must comply with this plan, which contains the provisions ruling numbering in the entire country for fixed and mobile telephony, complementary and other services compatible with the telephone service (services of the same type).

Law of Number Portability

The enactment of this law has given the users of fixed and mobile telephone services an important amount of information about this market, which has forced the concessionaires to offer better products and improve the quality of the service, all due to the increase of the competition among them.

Interconnection

PTS and ITS concessionaires that render long-distance telephony services must establish and accept interconnections for the purposes of permitting subscribers and users of PTS of the same type to have communications between themselves, inside or outside the national territory. Such interconnections must be effected according to the technical rules, procedures and terms established by Subtel. New concessionaires must pay the costs and expenses necessary to interconnect, and the fees and tariffs charged (particularly access charges) shall be fixed every five years by the authorities. PTS and ITS concessionaires shall not discriminate between the services that are rendered by them in any way.

Television

Suppliers of open television broadcasting services (OTBS) services need a concession granted by the National Television Council (NTC) through a public bid process, while suppliers of CATV services need a permit granted by Subtel. For further details, please see question 15.

For information regarding content restriction, please see question 18.

Internet

Law of Internet and Net Neutrality

Article 24H and 24I of the GTL provides that PTS concessionaires that render services to internet service providers (ISPs), as well as the latter, shall not arbitrarily block, interfere with, discriminate against, hinder or restrict the right of any internet user to utilise, send, receive or offer any content, application or lawful service through the internet. Infringements of this prohibition are punished by Subtel. Additionally, ISPs shall publish technical specifications of the service they provide.

Radio

There is regulation regarding the granting of RBTS concessions to foreign investors and the nationality of several executive officers of free radio broadcasting concessionaires, all of which is explained further in question 14.

5 Structural or functional separation

Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Since 10 December 2010, Law No. 20,478 has been in force, which, among other things, allows the operation of infrastructure supplier companies by modifying the concept of ITS in the GTL, including within this concept those concessionaires who only provide physical infrastructure for telecoms services. This new law also simplifies the

required procedure for modifying the relevant concessions regarding this type of service. The requirements for obtaining, installing, operating and exploiting such types of concession are established in a special regulation issued by the MTT by means of Supreme Decree No. 99, in force from 6 July 2012.

6 Universal service obligations and financing

Outline any universal service obligations. How is provision of these services financed?

There are no universal service obligations in Chile. However, universal service is obviously a goal of our telecoms public policies. For example:

- one of the main criteria of assignment in concessions public bids is the coverage offered by the bidders;
- the Digital Agenda for 2013–2020 and the National Space Policy for 2013–2020 are inspired in the achievement of universal service; and
- the Telecoms Development Fund contemplated in the GTL is focused in universal service.

7 Number portability

Describe the number portability regime in your jurisdiction.

On 10 December 2010, Law No. 20,471 was published, which establishes the number portability right for the users of mobile telephone services as well as for the users of fixed telephone lines.

This law obligates the concessionaires of the public telephone services and the providers of complementary services connected to the public switched telephone network to implement the number portability system and to comply with the regulations to be issued for the correct operation of the system. This law further establishes that the technical implementation of the number portability shall be performed by a centralised and unique database, administrated by a portability management body, an entity in charge of providing the inquiry mechanisms for the consultation and administration of the database in a non-discriminatory and efficient way and in such a manner that the operational costs of the number portability system are kept to a minimum.

The financing of the number portability system has been defined by a special regulation based on a mixed and proportional system that considers the following sources:

- the necessary investment costs to provide services related with the number portability operation will be financed by the contributions that the public telephone service concessionaires and those concessionaires of the same type shall make according to their participation in the numbering assigned at national level; and
- the operating costs will be financed based on the portability transactions performed by the subscribers and users.

The law sets forth that those actions which prevent or make difficult the operation or the legitimate exercise of the rights that arise from the number portability incurred by the concessionaires of the public telephone service, by those concessionaires of the same type or by the portability management body shall be punished according to title VII of the GTL.

8 Customer terms and conditions

Are customer terms and conditions in the communications sector subject to specific rules?

No. Subtel is, however, empowered to request any information necessary for the completion of its functions from the telecoms concessionaires, including customer terms and conditions.

9 Net neutrality

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

On 26 August 2010, Law No. 20,453 was published. It sets forth the network neutrality principle in the GTL by virtue of which the ISPs and those that own and administrate the backbone structure of the internet service, shall not make any discrimination and differentiation among the information that runs through their equipment and/or the network infrastructure.

This law was complemented by a special regulation, published on 18 March 2011, which establishes the specific requirements that the ISPs must accomplish in connection with these network neutrality legal obligations.

10 Next-Generation-Access (NGA) networks

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

There are no specific regulations on NGA networks. In this regard, the GTL and its ancillary regulations only rule over the telecommunication services, but not over the networks through which such services are provided. The services may always be rendered if the relevant operator fulfils the applicable technical regulations.

The above-mentioned structure is the result of the technology-neutral principle that inspires Chilean telecoms legislation, pursuant to which services are provided without regard to the technology used for their provision.

The GTL contemplates the creation of a Telecoms Development Fund with the purpose of promoting the increase of telecoms services coverage in poor or geographically isolated areas. The fund contemplates subsidising:

- projects for publicly available telephones and calling centres;
- community 'infocentres' (these projects shall have the purpose of promoting information and communication technologies, including connection to internet);
- local radio and television services; and
- any other project for telecoms services that may benefit the community.

During 2013, the Chilean government, acting through the Secretary of Digital Development, prepared a new programme, the Digital Agenda for 2013–2020, in order to have an action plan for the next seven years regarding this important matter and also for the purpose of increasing digital penetration throughout Chile. The Digital Agenda strategy will be based on five pillars: entrepreneurship and innovation, connectivity and digital inclusion, creation of an appropriate digital environment for its development, education of the digital citizen and digital training.

11 Data protection

Is there a specific data protection regime applicable to the communications sector?

The GTL does not regulate a specific data protection regime applicable to the communications sector.

Furthermore, article 19(4) of the Chilean Constitution establishes the right of 'respect and protection to private and public life and to the honour of a person and his family'; and article 19(5) establishes the right of 'non-violation of home and of any way of private communication', setting forth that private communications and documents may only be intercepted, opened or registered in cases and manners determined by the law. Additionally, the Personal Data Protection Law establishes, as a general principle, that save for

certain specific exceptions (eg, data available from sources accessible to the public, etc), it is mandatory to obtain the prior written consent of the data subject to gather and process personal data. If not, the breaching party may be forced to indemnify the data subject for any damages caused by such breach.

However, under certain statutes (eg, the Criminal Procedural Code, the Anti-Terrorist Law and the Anti-Drug Law) Chilean criminal courts may instruct a telecoms operator to intercept communications from or to any person, so as to determine such person's eventual liability in criminal offences.

In these cases, telephone and telecoms operators shall facilitate the investigators with all the means necessary to intercept the targeted communications as soon as possible. For this purpose, telephone and telecoms operators shall keep at the disposal of the Public Ministry, on a confidential basis, an updated list of their authorised IP address ranges and a registry of the IP numbers of the connections made by their users during, at least, the preceding six months. Refusal to intercept communications when ordered by a court shall be considered a criminal offence.

12 Key trends and expected changes

Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

The main hot topic in communications regulation in these days is the new public bid process for the distribution of the 700MHz band which will be freed up as a consequence of the digital television switchover. Such band would be reallocated and made available to public telecommunications services concessions based on 4G technology, except for a portion of 20MHz that has been reserved for public security and emergency services.

Another interesting development in the field is that Subtel announced the reduction of 73 per cent, during the next five years, of the tariffs charged among the concessionaires for the interconnection of their networks, which are known as access charges. This implies that all mobile telephony companies will pay less for interconnecting their networks, thus eliminating the entrance barriers for incoming actors. Furthermore, the competition of the market will increase, and this will promote the revitalisation of the fixed telephony, which will also pay less to communicate with mobile phones. Consequently, users will have access to better offers and services, and the Chilean access charges will be within the average of those of OECD countries.

There is also a new bill currently being discussed in the Chilean Congress which, if approved, will create a Superintendence of Telecommunications. This entity will be public, autonomous, non-centralised and will own and manage its own patrimony. Its main roles will be the supervision of compliance with local telecoms regulations by the operators and the imposition of administrative sanctions if such regulations are violated. (These functions are currently performed by Subtel and will be transferred to the new entity.)

A new Digital Agenda for 2013–2020 was prepared by the government, acting through the Secretary of Digital Development, in order to have an action plan for the next seven years regarding this important matter and also for the purpose of increasing digital penetration throughout Chilean territory.

Also, during 2013, Law No. 20,704 was published. This new law established the gradual elimination, during 2014, of the national long-distance system.

Finally, Subtel and Chile's antitrust authorities are currently adopting some measures in order to create a 'secondary market' for the transfer of mobile telephony radio electric spectrum by and among the current operators and to achieve this, Subtel has already amended the 2G, 3G and 4G mobile concessions technical rules allowing the separation of the current spectrum band blocks into

sub-bands of 10MHz each; although it is not entirely clear at this stage in which manner the concessionaires would be able to partially assign their spectrum that is currently subject to a specific governmental authorisation (the relevant concession) and inseparable or indivisible from the same.

Media

13 Regulatory and institutional structure

Summarise the regulatory framework for the media sector in your jurisdiction.

In connection with the regulatory framework for the media sector in Chile, the main law to take into account is the National Television Council Law (NTCL), which mainly regulates the following matters:

- the duties, attributions and organisation of the NTC;
- concessions for open television broadcasting services and their granting procedure; and
- the sanctions for breaches to the law.

Regarding the institutional framework for the media sector, the main regulatory body is the NTC, which has the authority to regulate certain technical aspects of television transmissions, as well as the content of broadcasting.

From a technical perspective, the NTC is the entity in charge of granting, renewing and modifying OTBS concessions (not cable) and supervising that OTBS concessionaires comply with the provisions of the NTCL.

The NTC is also in charge of supervising that the content transmitted by both OTBS and CATV operators complies with the 'proper performance' requirements set forth in the NTCL. The NTC may apply sanctions only if it verifies that a violation to the NTCL has been committed, but it has no previous censorship authorities.

Even though the broadcasting sector is regulated separately from the telecoms sector, in some aspects these markets are subject to a regulatory overlap. From a technical standpoint, cable television (CATV) operators are subject to the GTL.

For this reason, the MTT, through Subtel, is the entity in charge of granting, renewing and modifying CATV permits and supervising that CATV operators comply with the provisions of the GTL. Subtel's supervisory authorities extend only to technical aspects of the permit holders' operations and do not include the ability to control or censor the content of their transmissions.

Subtel also manages, pursuant to the GTL, the assignment of the radio electric spectrum for the broadcasting operators.

14 Ownership restrictions

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

In general, there are no restrictions on the ownership and control of broadcasters. Foreign investors may participate in broadcasting activities in Chile and even be the exclusive controllers of Chilean broadcasting companies.

Any material change in the ownership of any media entity shall be communicated to the Competition Court within 30 days from its occurrence. However, in the case of media subject to concessions granted by the state (OTBS, CATV operators, etc), the relevant change of ownership may be performed only with the previous and favourable opinion of the Competition Court. Such report shall be issued by the Competition Court within 30 days from the request of the interested party. Otherwise, it shall be understood that the change of ownership in the relevant media entity does not deserve any kind of objection from the court.

There are currently no regulations in relation to the cross-ownership of media companies. An OTBS concession, however, may not be granted to an entity that already is or controls a VHF concessionaire in the same service area. Likewise, Chilean authorities might restrict cross-ownership of media companies if, according to antitrust law, it impairs, restricts or eliminates free competition within the relevant market. Any such instances will be analysed on a case-by-case basis by the Competition Court. Currently there is no bill related to cross-ownership, nor any plan or suggestion to change the regulation applicable to this matter.

In case of RBTS concessions requested or acquired by entities controlled in more than 10 per cent by foreign investors, such RBTS concessions may be granted to or acquired by the respective entity only if it previously provides evidence that the country of origin of the foreign investors grants to Chilean citizens the same rights that they will enjoy in Chile (reciprocity).

Likewise, according to Chilean law, the chairperson, managers, administrators, legal representatives and at least the majority of the board members of the RBTS concessionaires must be Chilean citizens. The chairperson, managers, administrators, legal representatives and all the board members of OTBS concessionaires must also be Chilean citizens.

15 Licensing requirements

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

A concession granted through a public bid process by the NTC is necessary in order to provide OTBS services. Almost all RBTS and OTBS concessions allowed for within the relevant markets in the country have been already granted and are in operation. So, the MTT or the NTC will only announce public bids when a spot becomes available as a result of the expiration, cancellation or waiver of an existing concession. On the other hand, a permit granted by Subtel is necessary to provide CATV services.

The duration of the procedures for the granting of media concessions and permits depends on a series of variables that may differ from one specific case to another (particularly when there is opposition from third parties, which sometimes may need to be resolved by the courts). In standard cases, however, the granting of LTS permits (ie, for CATV) may take between two and six months, while the granting of OTBS concessions may take seven to eight months.

Regarding the fees payable, the general rule is that media concessions and permits are granted on a free basis. Nevertheless, and as a result of the fact that OTBS services are granted through a public bidding process, they may be subject to auction by the media authorities when two or more bidders present equally suitable offers.

The GTL provides, however, that the operators of OTBS services that use the radio electric spectrum are subject to an official fee or duty for the use of the spectrum. For more information on this issue, see question 2.

16 Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

There are no current regulations. The NTC, however, has the authority to determine, in a general manner, that up to 40 per cent of the transmissions of OTBS channels must consist of domestic productions. This determination is only applicable to the OTBS, and therefore, the other types of media are not subject to this regime.

17 Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

The regulation of radio and television advertising is not organic in Chile and it is covered by several legal provisions:

- advertising transmitted through OTBS or CATV must comply with the 'proper performance' requirements contained in the NTCL;
- the NTC has established that any kind of advertising of prohibited drugs is forbidden;
- the Tobacco Law materially restricts tobacco advertising. This law provides that no advertising or promotion of tobacco products shall be made in publications addressed to people under 18 years old. On television, such advertising or promotion shall be done only in hours in which the NTC has authorised programmes qualified for people older than 18 years old. Likewise, tobacco advertising in Chilean communications media by means of international signals or websites ending with '.cl' (the suffix for domain names granted in Chile) is prohibited;
- the Consumers Protection Law prohibits false or misleading advertising;
- the Unfair Competition Law sanctions any conduct against the good faith that using illegitimate means is aimed at deviating customers 'from any market agent'. In such regard, among other types of conduct, the Unfair Competition Law specifically classifies as unfair competition:
 - any false or incorrect statement or information about any product, service, activity, trademark or logo of any third party, when such false or incorrect statement or information is capable of damaging the market reputation of such third party;
 - any conduct that makes use of another party's reputation and leads to confusion about own and third parties' products and services; and
 - any comparative advertising that is not based in verifiable and true data;
- the Press Law grants the right of clarification and rectification, through which any person or entity offended or unfairly alluded to (eg, through advertising) in the media, has the right to transmit or publish (as the case may be) a clarification or rectification in the same media in which the offence or unfair allusion was made, paying only for the cost of the material to be transmitted or published;
- according to the Law of Votes and Scrutiny, electoral propaganda may only be transmitted during the period running from 30 to three days before the relevant election or referendum. However, this law contains a prohibition that affects the CATV services, which shall not broadcast electoral propaganda;
- the Law on Nutritional Composition of the Food and its Publicity prohibits the advertising, directed to people under 14 years of age, of products considered as harmful by the Ministry of Health, and requires that any advertising that is carried out by mass media shall contain a message that promote healthy lifestyles;
- the Law on Advertising related to Pharmaceutical Products states that only the pharmaceutical products that can be sold without prescription can be advertised, without the need for authorisation by the Public Health Institute (ISP); and
- the Regulation of the National System of Cosmetics establishes that in the advertising of such products, it is forbidden to use terms, expressions, graphics, figures, references or interpretations that go against the scientific truth and lead to misrepresentation or deceit. Likewise, the advertising shall not attribute, directly or indirectly, therapeutic qualities, effects or characteristics that the products do not have or cannot be verified.

If the terrestrial digital TV (TDT) bill that is currently being discussed in the National Congress is approved by the National Congress, the NTC will have the authority to establish restrictions and limitations on the exhibition of products for which advertising is prohibited or limited under current regulations, whether in relation to its schedules of exhibition or to the qualitative aspects of its contents.

As a result of the above-mentioned lack of an organic regulation in connection with advertising, the companies engaged in this business and the RBTS and OTBS providers created the National Council of Advertising Auto-Regulation (CONAR). As part of its activities, CONAR issued an advertising ethical code and created an arbitration court. CONAR's ethical code states that:

- advertising must be legal, decent, honest and truthful;
- advertising must be prepared with a proper sense of social responsibility, by specialised professionals who use adequate information and documentation, according to the principles of free competition related to the general practices that are used in the commercial activity sector;
- no advertisement must be exhibited in a way that diminishes public confidence in publicity;
- every advertisement activity must involve real and true competition among several products and services, that, through adequate information, will allow the public to make a free and informed choice; and
- as an activity oriented mainly towards public welfare, advertisers and agencies must adapt their actions to the economic, cultural, social and educational reality that the community has at the moment in which the relevant products and services are offered.

Most of the relevant players in the advertising business have voluntarily submitted themselves to the above-mentioned ethical code and arbitration court. This auto-regulatory approach of the advertising market has proven to be very successful in preventing advertising abuses and conflicts. In fact, only on rare occasions have the authorities been forced to take action in relation to an advertising issue.

Online advertising has also not been organically regulated, but it is subject to most of the rules mentioned above for non-online advertising. Nevertheless, in September 2012, the partners of an independent association that is part of a worldwide affiliate network of the Interactive Advertising Bureau (IAB) presented a new mechanism of online advertisement auto-regulation, called 'System of Trust'. The main objective of this system established by IAB Chile is to regulate the conduct of those who participate in the online market, and it is based in three main pillars: a code of conduct that ensures respect for the user's rights; an alternative dispute resolution mechanism; and a trust trademark and logo, which the association's partners are able to use and to be identified with.

18 Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

OTBS concessionaires have to transmit at least one cultural programme per week. Such cultural programmes must have a duration of at least one hour and must be broadcast between 6pm and 11pm. However, if the TDT bill that is currently being discussed in the National Congress is approved, this obligation will increase to four hours.

Likewise, the President or other high-ranking public officials may request a national broadcasting chain. Under a national broadcasting chain, all OTBS concessionaires are requested by the government to transmit, at the same time, certain information or announcements deemed highly relevant to the Chilean people. Furthermore, in the scenario in which the TDT bill is approved, the NTC would have the authority to issue general and binding rules related to the obligation of the operators of broadcasting campaigns of public and social interest.

The relevant broadcasters must assume the cost of the cultural programme and any national broadcasting chain.

Finally, the Law of Votes and Scrutiny regulates the propaganda that different candidates or positions may broadcast during electoral periods.

19 Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

There is no specific regulation in connection with new media content and delivery, different from traditional broadcasting media. These two kinds of content, however, are subject to the general regulations applicable in this regard (constitutional rights, criminal law, private law, etc).

20 Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

In September 2009, Subtel communicated the decision to adopt the digital television technology standard ISDB-T with MPEG4. This standard was created in Japan and modified in Brazil. The telecoms authorities have predicted that the digital switchover should not happen before 2017.

In order to prepare future players, Subtel granted experimental permits to transmit digital television in different regions of Chile.

Because of the experimental permits granted by Subtel, in accordance with the Project of Development of Regional Technical Competences, to date, nine local channels are rendering OTBS services with high-definition (HD) contents, and it is expected to continue with the project in order to cover more localities, benefiting more players and local users.

Also, in order to spread this technology throughout the country, from 2009 OTBS concessionaires have been provisionally transmitting digital television by means of temporary permits that are renewed every year.

21 Digital formats

Does regulation restrict how broadcasters can use their spectrum (multi-channelling, high definition, data services)?

Regarding the OTBS, the concession system established by the NTCL in order to grant the spectrum required for the transmission of open television restricts the use of such spectrum only to the transmission of one television signal through an analogue transmission. However, it should be noted that if the TDT bill is approved by the National Congress, it will substantially change the regulatory framework of this telecommunications service (eg, by authorising the broadcasters or holders of open television concessions to transmit more than one television signal and to render complementary services such as multi-channelling, high definition, multi-programme, etc, over the same spectrum).

In the case of satellite television services, because of the nature of this kind of broadcasting, the permit that grants the necessary spectrum allows the permit holder to offer multi-channelling, high definition, multi-programmes, etc over the same spectrum.

22 Media plurality

Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

The regulation of media plurality is not organic in Chile; however, there are two regulatory bodies that take this subject into consideration:

The first is the Law on Freedom of Opinion and Information and the Exercise of Journalism. Article 3 establishes the plurality in the information system, by ensuring the freedom to fund, edit, establish, operate and maintain mass media. On the other hand, article 4 states that the National Budget Law will provide, annually, funds for the realisation of studies regarding plurality in the national information system, which will be awarded through public auction by the National Commission for Scientific and Technological Research.

Likewise, the NTCL also makes reference to plurality in article 1, by conceiving the 'proper performance' of the television broadcasting services as the permanent respect for democracy, peace and plurality, among others.

Also, article 14 of the NTCL sets out the obligation on the NTC to adopt measures and procedures to ensure that the principle of plurality is respected in television programmes broadcasted by any channel regarding opinion and political debate. If the TDT bill is approved, news programmes will be incorporated in this legal provision.

23 Key trends and expected changes

Provide a summary of key emerging trends and hot topics in media regulation in your country.

The hottest topic in media regulation, without a doubt, is the process for discussion and approval in the National Congress of the TDT bill, which has been a nationwide topic of discussion a long time. As mentioned, the approval of this bill (which is imminent) would change several aspects of the media regulation, such as increasing the authority of the NTC, the modification of certain requirements to the broadcasters, and the invigoration of the protection of different subjects that are of the legislator's interest.

Regulatory agencies and competition law

24 Regulatory agencies

Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The antitrust authorities are the Antitrust Court (TDLC) and the National Economic Prosecutor (FNE). Both are responsible for enforcing Chile's Antitrust Law.

The TDLC is an independent entity (jurisdictional) with the fundamental mission of ruling on all cases filed by the FNE or private individuals. It is also in charge of issuing specific or – occasionally – general guidelines for the enforcement of antitrust regulations.

The FNE is an independent administrative agency in charge of investigating any violations of the Antitrust Law, represents the public interest and seeks the enforcement of resolutions, decisions and instructions issued and passed by the TDLC or the courts of justice in antitrust cases.

The communications regulator Subtel is a separate body from the antitrust regulators (TDLC and FNE) and there are no jurisdiction conflicts, because each body has specific duties and powers. The final decisions of the antitrust authorities are subject to review by the Supreme Court of Justice ensuring the consistent application of the law.

25 Appeal procedure

How can decisions of the regulators be challenged and on what bases?

The GTL and the NTCL establish specific procedures under which telecoms regulators' decisions may be challenged. These procedures generally allow the possibility to appeal such decisions before the ordinary courts of justice including, ultimately, the Supreme Court.

Resolutions in connection with anti-competitive practices (including any practice affecting the telecoms and broadcasting sectors) are the responsibility of the Competition Court pursuant to general antitrust law. The parties or the FNE could file a special appeal before the Supreme Court, against the final resolution issued by the Competition Court that imposed or dismiss measures requested by the parties or the FNE or the measures contemplated in article 26 of the Antitrust Law.

26 Competition law in the communications and media sectors

Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.

On 18 December 2012, the Competition Court issued a General Instruction (General Instruction No. 2) to the mobile telephony market and imposed additional regulations. With respect to such market, the Competition Court concluded that the difference between

the rates charged by mobile phone companies if calls terminate on its own network (on-net calls) or in other networks (off-net calls) were several times higher than the interconnection access charges set by the authority. According to the Competition Court, this discrimination has no economic justification and has the effect of excluding and preventing the development of new competitors, in this way increasing the incumbents' market power.

To mitigate these effects against competition, from the entry into force of the new tariff decree (issued on January 2014) by which the authority have determined the new access charges, the companies shall not commercialise plans with different pricing for on-net calls and off-net calls or deliver a different amount of minutes.

On 29 May 2013, General Instruction No. 2 was amended by the TDLC in order to exempt calls made within so-called 'group plans' (plans allowing calls between clients of the same mobile company).

On 17 December 2013, the Supreme Court confirmed the Competition Court's decision partially modifying the General Instruction No. 2.

During 2013, there were no relevant antitrust decisions regarding a merger in the communications and media sector. On 12 July 2013, the Competition Court authorised the participation of certain companies in the public tender for the renewal of RBTS concessions.



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