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Communications Law

Newsletter of the International Bar Association Legal Practice Division

VOLUME 20 ISSUE 1 APRIL 2013

New communications antenna law in Chile

CHILE

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On 11 June 2012, Law No 20.599, that 'Regulates the installation of antennas used for the emission and transmission of telecommunications services' (the 'Antenna Law') came into force. This new regulation has substantially changed the procedure for installing antennas and supporting towers in urban areas by adding several new requirements, restrictions and obligations to existing laws for communications, planning and construction that mobile network operators will have to comply with before installing antenna towers. This new regulatory framework has had a significant impact in the mobile communications market, by increasing the costs associated with the installation of infrastructure and by establishing new requirements that have led to some operators having to modify – or even decommission – antenna towers they had already installed.

It all started on 16 April 2007 when a new bill for the regulation of the installation of communications antennas was filed for discussion before the Chilean Congress. At that time, the main concerns of the congressmen who supported this regulatory initiative were:

- the impact of the communications antennas and towers on those urban areas in which they were installed and the level of general objection from the local population; and
- the perceived necessity to protect the population from the possible harmful effects on health caused by the electromagnetic waves emitted by the antennas.

The fact that communications services activity (and, therefore, the installation of more communications infrastructure) was significantly increasing in Chile was also an element that led the authorities to consider a new legal framework for the installation of antennas and towers.

After five years of discussion in the Chilean Congress, the Antenna Law was implemented on 11 June 2012. It is having a significant impact on mobile communications operations in Chile since some of the new requirements, restrictions and obligations are affecting not only proposed future installation of antennas and towers, but also some antennas and towers that have already been installed. The Antenna Law is also affecting the costs associated with the deployment of infrastructure required to provide a quality service with good coverage.

The new requirements, restrictions and obligations of the Antenna Law may also affect competition; new entrants in the mobile market now face a completely new regulatory framework for network deployment which puts them at a disadvantage to existing providers who have already deployed the majority of their mobile installations. The Antenna Law makes provision for some specific regulations which attempt to reduce this disadvantage, for example, some cases of retroactive co-location; however, in our view, those measures have not been sufficient to guarantee a competitive mobile market.

Authorisation from the municipal (local) authority

Before the enactment of the Antenna Law, the only applicable procedure for the installation of a communications antenna and tower was the submission of an 'installation notice' containing some minimal information regarding the tower and antenna. This procedure has dramatically changed with the Antenna Law which has created a completely new and complex procedure that ends with the granting of an 'installation permit' by the Municipal Work Department of the local authority. One relevant aspect of this new procedure is the direct participation of the 'affected community' before the granting of the installation permit and, consequently, before the installation of the antenna and tower.

The installation procedure will vary depending on the height of the antenna tower (higher than 12 metres or between 3–12 metres). Likewise, the documentation and information to be filed with the Municipal Work Department will vary according to the height of the tower. In rural areas and when the antenna tower height

is less than three metres, as well as in some other special cases, a simple 'installation notice' (very similar to the one established in the former regulation) will be sufficient for the installation of the antenna and tower.

The Antenna Law also provides for special procedures depending on the proposed location of the antenna tower, covering 'risk areas', 'protection areas' or 'tourist interest areas'.

Camouflage of antenna towers or mitigation measures

In order to find a solution to the unpopularity of big and high antenna towers in neighbourhoods and communities, the Antenna Law has established a new obligation for communications operators. From now on, the community in question will decide which of the following two alternatives the operator will be required to implement when installing an antenna and tower:

- camouflage of the antenna and tower – this consists of a sort of 'costume' for the antenna and tower in order to diminish the visual impact caused by the structures and to harmonise them with the environment. Typical examples are antennas and towers camouflaged in the form of palms, trees, bell towers (or other designs included in an authorised catalogue); or
- mitigation measures to the benefit of the community – mitigation measures may consist of either the implementation of communication services in the relevant community or area, or the improvement of green areas, pavements, bike lanes, lighting, ornament or other similar measures.

Co-location obligation

Co-location is the installation of two or more antennas of different operators on the same tower or, in other words, the sharing of infrastructure among different operators. The main purpose of co-location is to avoid the proliferation of antenna towers.

The issue of co-location provisions to be included in the Antenna Law, specifically the degree of application of this new obligation (whether they should be only applicable in relation to towers to be installed *after* the introduction of the Antenna Law or if they should also be applicable to towers installed *prior* to its enactment with *retroactive* effect) was one of the most controversial topics discussed in the Congress, which partially explains the five-year-long legislative process.

One group (represented by the incumbent mobile operators) was against the retroactive co-location, arguing that it was against the Constitution as it affected constitutional rights of private property and could be regarded as expropriation. On the other hand, another group (represented by the new entrants) argued that retroactive co-location was not against the Constitution since it was part of the obligations that any operator providing a public service should assume and that the co-location procedure in the Antenna Law provided for appropriate compensation for the owners of the antenna towers. In addition, this group argued that a broad application of the co-location obligation would tend to promote competition in the mobile market by permitting new entrants to compete on more equal terms with incumbents.

The outcome of this long discussion process was a compromise solution reflected in the legislation. The Antenna Law provides that every time a communications operator plans to install an antenna, it should verify, prior to installation, whether there is another tower from a different communications operator on which it is feasible to add another antenna. This obligation applies as a general rule only to the antenna towers installed or to be installed after the date on which the Antenna Law came into force; however, there are some exceptions, in which cases the co-location obligation applies with retroactive effect over antenna towers installed before that date. The exceptions are:

On territories which are infrastructure-saturated

These are zones declared as such by the Undersecretary of Telecommunication ('Subtel') when there are too many antenna towers in a determined area (this declaration depends on objective criteria which are defined in the Antenna Law). The declaration that zones are infrastructure-saturated not only affects antenna towers to be installed in the future but also has retroactive effects on antenna towers already installed. A transitional article of the Antenna Law establishes that the determination that a zone is infrastructure-saturated also imposes co-location or mitigation and compensation obligations for the group of mobile operators who have already installed antenna towers in that zone. Those areas are known in the market as 'antenna forests'. Where

Subtel has made a declaration that a zone is infrastructure-saturated, mobile operators who have already deployed infrastructure must cooperate with each other in order to reach reasonable and convenient co-location agreements for complying with this new and demanding regulation.

On territories which have been declared as restricted radio-electrical propagation zones

These are zones declared as such by Subtel when their geographical characteristics do not permit a technical substitute in order to cover the territory on which the communications service is to be rendered.

The Antenna Law provides that, except for some specific cases (eg, technical reasons or co-location authorisation already granted to another operator, among others), it is mandatory for a communications operator which receives a request to grant the relevant co-location authorisation.

Protection of sensitive areas

Sensitive areas are those areas that, according to the Antenna Law, demand special protection due to the presence of educational institutions, nurseries, kindergartens, hospitals, clinics, nursing homes or other institutions of similar nature, declared as such by Subtel, and urban territories where pylons are located.

Except for some specific cases, the installation of antenna towers is forbidden within sensitive areas or in sites located within a distance which is less than four times the height of the respective antenna tower, measured from the boundaries of the relevant sensitive area, with a minimum distance of 50 metres.

Provisions applicable to sensitive areas, (similar to the case of territories which have been declared as infrastructure-saturated), also apply to antenna towers installed *prior* to the introduction of the Antenna Law. In fact, another transitional article of the Antenna Law applies with retroactive effect on antenna towers already installed, providing that the communications operators who have installed antenna towers without complying with the new minimum distance requirements will have to reduce the height of such antennas and towers within a specified period or to relocate them if it is not possible to reduce their height within that period. There are also mandatory co-location obligations for antenna towers located within certain territorial rings surrounding the sensitive areas.

New regulation in connection with antenna emissions

The second concern of the authorities related to the perception of possible harmful effects on health produced by the antenna emissions. It has been tackled by the Antenna Law by establishing a new prohibition of the installation of antennas in those urban zones that have been declared by Subtel as 'saturated with telecommunications radiant systems', defined as those zones where the power density of the antennas installed exceeds the limits determined by the technical regulation issued by Subtel in this regard.

Additionally, the Ministry of Environment will be in charge of issuing the environmental quality regulations related to antenna emissions. The power density limits established by this entity are to be equal to or less than the simple average of the five most demanding standards established by OECD member countries.