

# Telecoms & Media 2019

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# Telecoms & Media

## 2019

**Contributing editors****Alexander Brown and Peter Broadhurst**

Simmons &amp; Simmons LLP

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Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Telecoms & Media*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Korea.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and Peter Broadhurst of Simmons & Simmons LLP, for their continued assistance with this volume.



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## COMMUNICATIONS POLICY

### Regulatory and institutional structure

1 | 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 on 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 Chilean law for the issuance of any regulation. Telecoms policies, therefore, are established by the authority through the issuance of supreme decrees, exempt 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 general public and market players before adopting new policies.

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 18.

### Authorisation/licensing regime

2 | 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 networks and other wireless services), the relevant concessions and permits shall be granted through a public bid 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 and data, trunking, etc). These services must be designed 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. These kind of services may not give access to public telecommunications networks;
- intermediate telecommunications services (ITS), which are services provided through facilities and networks, aimed at satisfying the transmission and switching needs of other telecommunications concessionaires or permissionaires or at providing long-distance telephone services to the general community; and
- 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 and mobile terrestrial 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 capital).

The installation, operation and exploitation of LTS require 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. However, no permit is required in the 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 the infrastructure of ITS concessionaires. This would be the case, for example, for public or private Wi-Fi services, as the Wi-Fi service itself (without taking into consideration the data transmission and public internet access service) would not be subject to any regulation provided that the Wi-Fi signal does not exceed the actual estate in which Wi-Fi equipment (ie, wireless routers) is located.

The installation, operation and exploitation of CTS do 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 six months and one year. 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 bid process, because 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, holders of LTS permits, 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.

### Flexibility in spectrum use

**3** | 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, there is a bill currently being discussed in the Chilean Congress that, if approved, will create a 'secondary market' for the transfer of mobile telephony radio electric spectrum. For more details, see question 16.

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. However, the assignee may request the amendment of technical and economic projects at any time.

### Ex-ante regulatory obligations

**4** | 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 CTS, 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: telephone, television, internet and radio.

#### Telephone

##### 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 owing 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) need a concession granted by the National Television Council (NTC) through a public bid process, while cable television (CATV) operators need a permit granted by Subtel. For further details, see question 19. For information regarding content restriction, see question 22.

## Internet

### Law of Internet and Net Neutrality

Article 24H and 24I of the GTL provides that internet service providers (ISPs), which are defined as 'legal entities that render commercial connectivity services between final users or third parties' networks and internet', 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.

Moreover, article 24K of the GTL sets forth that ISPs must guarantee a percentage of the average access speeds, for the different time periods of greater and lesser traffic, offered in their different commercial plans, with respect to national and international connections – wired and wireless – and must make available to users a system or application that allows the measurement of said speeds and associated technical parameters, all in accordance with the technical standard that Subtel shall enact. Regarding the latter, Subtel is currently preparing such technical standards and has been requesting Chilean ISPs and other operators certain information about their network structure, data traffic and access speeds.

## 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 (see question 18).

Finally, from a competition law standpoint, there are no specific telecommunications markets or segments subject to ex-ante regulation. The telecom market is governed by the general competition laws existing in Chile.

## Structural or functional separation

5 | 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 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 since 6 July 2012.

Regarding wireless networks, since the enactment of the Antenna Law (No. 20,599) on 11 June 2012, infrastructure sharing is strongly encouraged and sometimes even mandatory. This has opened the market for international infrastructure providers to either acquire operator-owned assets or build new infrastructure destined to host and support network equipment of multiple operators.

## Universal service obligations and financing

6 | 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 Chile's telecoms public policies. For example, one of the main criteria of assignment in concessions public bids is the coverage (especially in isolated or rural areas) offered by the bidders; the Digital Agenda 2020, issued in November 2015, which

updates the former Digital Agenda for 2013–2020, and the National Space Policy for 2013–2020, aims to achieve universal service; and the Telecoms Development Fund contemplated in the GTL is focused on universal service.

## Number allocation and portability

7 | Describe the number allocation scheme and 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 concessionaries 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 number portability shall be performed by a centralised and unique database, administrated by a portability management body, an entity in charge of providing 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 to 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 that 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.

According to Subtel, as of 31 December 2018, 17,213,627 numbers, fixed and mobile combined, have been transferred from one operator to another since the implementation of the system.

Regarding number allocation, Subtel must answer requests for telephone numbers made by the relevant operators within a period of 30 days. Moreover, Subtel, by means of a resolution, and depending on the technology conditions and telephone number requests, shall establish the amount of digits and area codes for telephone numbers.

## Customer terms and conditions

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

On 13 June 2014, Decree No. 18 (the Telecommunications Services Regulations or TSR) was published, which set forth the new regulations for all telecommunication services. The main purpose of the TSR is to regulate the rights and obligations of the telecommunication services providers (the providers) and the subscribers and users of the same (the users).

The main topics treated in the TSR are the following.

## Hiring and minimum contract provisions

Providers must assure the users the existence of an informed and transparent hiring procedure. Additionally, the contract must contain the

minimum provisions established in the TSR (eg, information regarding technical assistance, maintenance and repair services, etc).

### Payment and compensation

The providers shall not charge the users for the services that have not been delivered. In the same way, providers of public voice services and ISPs shall deduct from the monthly invoice the time during which the service was suspended, interrupted or altered for any cause not attributable to the user. Should the suspension, interruption or alteration exceed 48 continuous or discontinuous hours during a month and this is not owing to force majeure or an act of God, then the provider shall also indemnify the user with the equivalent of three times the value of the daily rate for each day of suspension, interruption or alteration of the service.

In the same way, providers must deliver on a monthly basis and in paper or electronic form, at the user's choice, an invoice including the information on the supplied telecommunications services and which content and structure should comply with the TSR.

### Suspension of services

The provider may suspend the relevant services if the user has not paid the invoice within five days after the payment date. The deadline for restoring the service shall be the business day following the date on which the service was duly paid.

### Termination

The user can end the contract at any time at its own discretion. Non-payment of the service within 90 days from the due date of the invoice enables the provider to put an end to the contract.

The foregoing is without prejudice to the rights and remedies contained in Law No. 19,496 that regulates the Protection of Consumer Rights, and in other applicable regulations.

Subtel is empowered to request any information necessary for the exercise of its functions from the telecoms concessionaires, permissionaires and licensees including customer terms and conditions.

On 14 January 2015 the Free Choice of Cable, Internet and Telephony Services Law was enacted. The Law sets forth that the free choice of telecommunications services must be granted to users in every building. In this regard, every building must be able to allow different telecommunication operators to install their infrastructure and provide their services.

### Net neutrality

9 | 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 shall not make any discrimination and differentiation among the information that runs through their equipment or the network infrastructure.

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

In this regard, according to the net neutrality law, ISPs:

- cannot arbitrarily block, interfere with, discriminate against, hinder or restrict the right of any internet user to use, send, receive or offer any content, application or legitimate service through the internet, as well as any other activity or legitimate use performed through the network. In this sense, they must provide each user with an internet service access or connectivity with the provider

of internet access, as appropriate, which cannot arbitrarily distinguish content, applications or services, based on the source or ownership thereof, taking into account the different configurations of the internet connection under the current contract with users;

- cannot limit the right of a user to add or use any kind of instruments or devices on the network, provided that they are legitimate and that they do not damage or harm the network or the service quality;
- shall provide, at the expense of users who request such services, parental control services for contents against the law, morality or good customs, provided that the user is clearly and precisely informed in advance about the scope of such services; and
- shall publish on its website all information relating to the characteristics of internet access service offered, speed, link quality, differentiating between national and international connections, as well as the nature of the service and service warranties.

However, ISPs may take the measures or actions necessary for traffic and network management, in the exclusive scope of activity that has been licensed to them, provided that this is not designed to perform actions that affect or may affect free competition. ISPs shall seek to preserve user privacy, virus protection and network security. Additionally, ISPs may block access to certain content, applications or services, only at the express request of the user and at such user's own expense. This blocking cannot arbitrarily affect other providers of services and applications that are provided through the internet. Finally, according to Chilean law, a judge may order the blocking of access to internet sites or services by means of a judgment during a trial or as a temporary injunction.

For the above-mentioned reason, 'zero-rating' (understood as the lack of charging to customers for the data utilised by certain applications like social networks in limited data plans) and bandwidth 'throttling' (understood as the slowing down of internet speed for the entire service or for certain applications) have been actively addressed by Subtel, forcing the concessionaires to comply with the net neutrality law and its regulation. Regarding 'zero-rating', Subtel has issued an official interpretation on 14 April 2014 (Oficio Circular No. 40/2014) stating that offerings based on free internet with the purpose of the exclusive use of certain social networks included in the offering, with the sole condition of buying a recharge of a pre-paid plan or a mobile internet bag, shall be considered a breach of the net neutrality regulations.

However, it seems that for the past couple of years, Subtel decided to assume a more 'pro-consumer approach' on this matter. In this regard, during 2016 the Undersecretary of Telecommunications stated that net neutrality regulations are designed to sanction the zero rating offers for people that do not have a data plan. However, for people that do have a data plan, ISPs or mobile telecommunications operators would be able to discriminate and offer social networks without affecting the amount of data included in their plans. Consequently, Subtel have decided not to actively enforce the net neutrality regulations against the zero rating offers for users that have a data plan (because, among other reasons, they would be beneficial to the customers). This interpretation has been subject to debate for not taking into consideration the free competition (eg, as a hypothesis, the Telegram application could have entrance barriers to compete with the WhatsApp application if the latter has the benefit of being provided at no cost in the networks of certain concessionaires).

Moreover, in April 2018, Subtel issued an Ordinary Letter addressed to mobile telecommunications operators, stating that 'unlimited' or any equivalent concept used for the commercialisation of a service has an unequivocal meaning for the user. Therefore, services advertised as such shall not be subject to restricted terms and conditions regarding capacity, velocity, hour schedules or any equivalent matter that may generate a degradation or suspension of the service, different from the

proper technical reductions of the network capacity and those means directly related to the management of the current traffic congestion applied to the public in general.

### Platform regulation

**10 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?**

Digital platforms have not yet been regulated. However, two new digital media bills are currently being discussed before the National Congress, which intends to modify the Press Law. The new bills aim to expand on the traditional media and press regulations and requirements for digital platforms.

Additionally, on 21 August 2018, a Tax Reform Bill promoted by the government was submitted to Congress. It is expected that this process will conclude during 2019. If passed as a new law, the reform would likely modify some relevant rules of the Chilean tax system currently in force, and provide a new Tax on Digital Services (TDS). The TDS, as regulated in this bill, is considered a specific and indirect tax, substituting any other, which levies digital services provided by individuals or foreign entities to the extent that such services are used in Chile by individuals. The main concerns regarding TDS provided in the bill are the following: (i) the tax rate (19 per cent) would be applied to the total amount of the transaction, without any deduction; (ii) a withholding mechanism would be established, falling upon the entities which issue the means of payment used in the transactions; and (iii) in the event that the users pay for the digital services with cash, the Chilean Internal Revenue Service (SII) would assess and collect the payment of the TDS directly from the foreign taxpayer that provides the digital services.

### Next-Generation-Access (NGA) networks

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

During 2015, the Chilean government, acting through the Secretary of Digital Development, prepared a new programme, the Digital Agenda 2020 issued in November 2015, which updates the Digital Agenda for 2013–2020, in order to have an action plan for the coming years regarding this important matter and also to increase digital penetration throughout Chile. The Digital Agenda strategy will be based on five pillars: rights to digital development, universal connectivity, digital government, development of the digital economy, and the improvement of digital competences in education and labour.

### Data protection

**12 | 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 also the protection of its personal data; 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), it is mandatory to obtain 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.

In fact, the TSR establishes that the user's personal data obtained by the providers can only be used for the specific purposes related to the provision of relevant service. 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 assist 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.

### Cybersecurity

**13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?**

There is no specific legislation concerning cybersecurity or network security in Chile. However, there are some regulations that contain cybersecurity provisions applicable only for certain areas or purposes. For example:

- article 24 H of the GTL regarding the obligation of seeking to preserve network security for ISPs and telecommunications concessionaires;
- Law No. 19,223 on categories of informatics offences, which refers to the protection against unauthorised disclosure and certain acts classified as computer crimes;
- Decree No. 83 of 2005 issued by the Ministry General Secretariat of the Presidency, on the Confidentiality and Security of Electronic Documents for the Public Administration;
- Superintendence of Banks and Financial Institutions (SBIF) Regulations, Chapter 20-7 on outsourcing of services (RAN Chapter 20-7) regulates network security provisions in the outsourcing of services executed by financial institutions through cloud service providers; and
- SBIF Regulations, Chapter 20-8 on information concerning operational incidents (RAN Chapter 20-8) regulates the obligation for financial institutions to report incidents (including cybersecurity incidents) to the SBIF, their clients and the banking industry.

Notwithstanding the above, it is important to mention that in April 2017, the Chilean government presented a new National Policy on Cybersecurity that aims to promote and ensure a free, open, safe and resilient cyberspace by 2022. To achieve this, this policy sets several targets, including:

- the establishment of a resilient information infrastructure in the country, prepared to face and recover from cybersecurity incidents, under a risk management approach;
- the protection by the Chilean state of the citizens' rights in cyberspace;
- the development of a cybersecurity culture based on education, good practices and accountability in the management of digital technologies; and
- the promotion of the cybersecurity industry.

The above-mentioned policy seeks the implementation of an institutional structure for cybersecurity, capable of fulfilling the policy's objectives and those roles identified as essential, such as the management of inter-institutional relationships, incident management, the role of national and international points of contact, preparation of technical regulations and an advisory role in general regulations, and evaluation of measures regarding cybersecurity.

Finally, in October 2018, the President of Chile issued a Presidential Instructive on Cybersecurity. It contains emergency measures that public bodies must address, including:

- the appointment of a high level cybersecurity officer in each service;
- the application and updating of technical regulations on cybersecurity;
- internal cybersecurity measures;
- detailed review of networks, systems and public operations digital platforms;
- surveillance and analysis of the operation of the technological infrastructure of State Administrative bodies;
- compulsory report of incidents to the Coordination Center of Government Entities; and
- response to cybersecurity incidents.

## Big data

**14** | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

The concept of big data and the legal challenges it raises have not been addressed by the Chilean authorities yet and, therefore, no specific regulations have been issued in this regard yet and the general personal data protection regime, explained in question 12, is the only available regulation in this regard.

However, the Chilean government has been developing and promoting a Public Open Data Platform (<https://datos.gob.cl/>), aimed at providing access to a public database to any person. This public platform is used by the government for developing its public policies and it can also be used by anyone who is conducting investigations or analysis, or is building applications. As of today, the platform is still in an early stage of development.

## Data localisation

**15** | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

There are no laws or any other regulations that require data to be stored locally in our country.

## Key trends and expected changes

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

One hot topic in communications regulation these days is the recently enacted regulation on Multiband Homologation and Certification of Mobile Devices. According to this new regulation, contained in Subtel's Exempt Resolution No. 1,463 of 2016, mobile devices destined for the public mobile telephony and data transmission services, to be distributed or commercialised in the Chilean market, must:

- support at least the total frequency bands that operate over one of the several technologies deployed in Chile;
- be homologated, certified and validated by an authorised entity;
- bear a distinctive sticker that should identify the capabilities of a device to operate over any of the technologies (ie, 2G, 3G, 4G, etc) and its support of a Chilean emergency alert system; and
- be registered at a central database to assure compliance with these regulations.

The purpose of this regulation is to facilitate number portability and eliminate limitations and restrictions that currently affect users' capability to switch operators, and thus remove the need to purchase different devices from different providers.

Another interesting recent development in the field is that Subtel announced a 77 per cent reduction, during the next five years, of the tariffs charged among concessionaires for the interconnection of their networks, which are known as access charges. This implies that all mobile telephony companies will pay less to interconnect their networks, thus eliminating the entrance barriers for incoming actors. Furthermore, the competition in the market will increase, and this will promote the revitalisation of fixed telephony, which will also pay less to communicate with mobile phones. Consequently, users will have access to better offers and services, and Chilean access charges will be on a par with those of OECD countries. Subtel's decrees providing these reductions should be issued and published during 2019.

There is also a bill currently being discussed in the Chilean Congress, which, if approved, will create a Superintendency 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.)

Moreover, there is another bill currently being discussed in the Chilean Congress which, if approved, will 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. According to the bill, the concessionaires would be able to partially assign their spectrum by means of a transfer, a lease, an assignment or a grant of right of use with the prior authorisation of Subtel, which may not be denied without reasonable cause. The new authorisation related to the relevant transfer, lease, assignment or grant of right of use, will have the same duration and obligations – applicable to the corresponding spectrum portion – as the original concession title.

Regarding mobile services, there has been a lot of expectation, in both the market players and the general public, regarding the announcement of the upcoming spectrum allocations for the deployment of 5G networks. However, there is a series of past and current events that may affect or delay this process, which are summarised below.

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, which became an opportunity for new entrants. The public bid took place during 2009 and, after a public bid, Nextel (currently WOM) 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 – at the time – next generation mobile services.

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

Later, during 2014, a new public bid process took place in Chile for the granting of PTS concessions based on 4G technology for the provision of fixed or mobile data transmission public services in the 713–748MHz and 768–803MHz frequency bands (700MHz frequency bands). Movistar, Entel and Claro were each awarded one of the three spectrum blocks granted through this public bid (blocks 'A' of 20MHz, 'B' of 30MHz and 'C' of 20MHz, respectively). In addition, on 7 November 2014, Subtel issued a technical rule reserving 20MHz of the 700MHz band in favour of the Chilean state to cover the communication needs of public safety and aid in case of catastrophes and emergencies.

Notwithstanding the foregoing, Telestar, Netline and Conadecus presented an opposition before the MTT, arguing that the limit of 60MHz established by the Supreme Court (on January 2009 in the 3G awarding process) was not being considered and enforced in the public bid process and that the bidding conditions were discriminatory. The MTT ruled in favour of the incumbents that participated in the public bid process, noting that this topic is currently being treated by the Antitrust Court and that, therefore, it is not of its competence and that the bidding conditions were fair and sufficient. Telestar appealed before the Court of Appeal of Santiago, which ruled in favour of the incumbents that participated in the public bid process, following the general reasoning of the MTT in its first instance decision. Finally, the Antitrust Court also ruled in favour of the incumbents.

However, a legal remedy was submitted by Conadecus against the Antitrust Court decision, before the Supreme Court in October 2016. After almost two years, in June 2018, the Supreme Court issued its ruling, stating that the incumbents incurred in anticompetitive conduct when participating in the 700MHz frequency bands public bid. It also stated that in order for the incumbents to have been able to participate in such bid, they would have had to: (i) previously dispose of the relevant spectrum blocks to assure that they did not exceed the 60MHz limit; or (ii) file the relevant consultation before the Antitrust Court to reanalyse such limit, based on the characteristics of the market at that time. Considering the above, the Supreme Court: (i) ordered the incumbents to dispose of an equal portion of the spectrum (in any band) obtained in the 700MHz frequency bands public bid (Entel 30MHz; and Movistar and Claro 20MHz each); and (ii) recommended Subtel to submit a consultation before the Antitrust Court to redefine the 60MHz spectrum limit.

As a consequence of the Supreme Court's ruling, in October 2018, Subtel submitted the above-mentioned consultation proposing an increase of the spectrum limits per concessionaire and making a segmentation of the frequency bands according to their nature (low, mid-low, mid-high and high). On the other hand, the incumbents still have not disposed of any of their spectrum blocks; therefore, Conadecus initiated enforcement proceedings before the Antitrust Court. Currently, such proceedings are pending.

Almost simultaneously with the Supreme Court resolution described above, in June 2018, Subtel issued the exempt resolution No. 1289-2018, which amended several technical rules of services provided in the 3,400–3,800MHz (3.5GHz) spectrum bands. The resolution established that no other telecommunications authorisations would be granted in

such frequency bands. However, it also suspended or 'froze' all the operations of all the telecommunications services that were authorised in such bands, giving the affected entities the possibility to provide their approved services in other frequency bands described in the same resolution. Subtel's decision provoked a turmoil in the telecommunications market, as it was well known that these frequency bands were under analysis for a possible future deployment of 5G technology. Thus, the main players holding concessions in such frequency bands filed legal remedies against the resolution seeking for its annulment by the courts. In October 2018, Subtel amended the resolution, partially eliminating the suspension for some of the telecommunications services originally included in such resolution. Consequently, the above-mentioned legal remedies were withdrawn by the affected operators.

Following the above, in February 2019, during the Mobile World Congress held in Barcelona, the Undersecretary of Telecommunications informed that the plan for the implementation of 5G would be starting during March of the same year, stating that Subtel would make available a 20MHz spectrum block in the 700MHz band for 5G, in line with what the authority was currently doing in the 3.5GHz band. Consequently, on 11 March, Subtel issued the exempt resolution No. 265-2019, and has made available for future public bids a 20MHz block in the 700MHz that was previously reserved in favour of the Chilean state to cover the communication needs of public safety and aid in case of catastrophes and emergencies.

There have also been some new developments in the physical infrastructure front. On March 2018, a new public bid process was announced regarding the deployment of land tracts of the Southern Fibre Optics Project. During 2017, another land tract and also submarine tract of the project were awarded. This project is part of an initiative to bring higher level connectivity to the most southern and extreme areas of the country. Finally, in connection with the above, there have been some announcements regarding new submarine cable projects. For example, Google has already started the deployment of the submarine cable that will connect the United States and Chile, which it is expected to be operative within 2019. Also, Huawei has announced that they are analysing the possibility of building a submarine cable between China and Chile. Finally, the Chilean government has announced an Asia-Chile fibre optics cable as an official project that is already being carried out and aims at selecting the cable builder provider during 2019.

In April 2018, the MTT published in the Official Gazette the Supreme Decree No. 167, which contains the regulation that rules the ways and conditions to guarantee the freedom of choice in the contracting and receiving of telecommunications services in private estates, buildings and co-owned real estate. Subsequently, Subtel issued the Exempt Resolution No. 766, which establishes the above-mentioned regulation's technical rule. These new regulations seek to apply and enforce the provisions of Law No. 20,808, which protects the freedom of choice of cable, internet and telephone services, also known as 'Duct Law', by establishing the minimal conditions of construction and design that allow for free access to telecommunications services by owners or lessees of units in private estates or building projects. The regulatory framework provided by these rules will permit telecommunications services providers to reach users that most of the time only had the chance to contract services from the only provider that originally was able to access such private states or buildings.

Finally, there are several governmental agencies currently discussing the blockchain, smart contracts and artificial intelligence technologies and its potential implications in different areas of the economy. Although the technology is young and its regulations worldwide are still unclear or at a very early stage of development, the telecommunications sector could be one of the areas affected by these revolutionary technologies. This is why new regulations could eventually arise from these discussions.

## MEDIA

### Regulatory and institutional structure

#### 17 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 broadcasting content.

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 respects these markets are subject to a regulatory overlap. From a technical standpoint, 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 broadcast operators.

### Ownership restrictions

#### 18 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 must be communicated to the National Economic Prosecutor within 30 days from its occurrence. However, in the case of media subject to the concession system granted by the state (OTBS, CATV operators, etc), the relevant change of ownership shall previously require a favourable report from the National Economic Prosecutor regarding its impact on competition, which shall be issued within 30 days from the reception of the transaction documentation. The National Economic Prosecutor must communicate its adverse reports to the Antitrust Court, and if no report is issued within the referred term, it shall be understood that the relevant change of ownership has not been subject to any kind of objection from the National Economic Prosecutor.

There are currently no regulations in relation to the cross-ownership of media companies. A new OTBS concession, however, may not be granted to entities that already hold a concession of the same nature, or that control or manage other OTBS concessionaires, whose concession has been granted by means of a public bid for 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 Antitrust Court. Currently there is no bill on cross-ownership, nor any plans or suggestions to change 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.

### Licensing requirements

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

A concession granted by means of a supreme decree issued by the NTC – through a public bid process – is necessary to provide both RBTS and OTBS services. Almost all RBTS and OTBS concessions allowed for the relevant markets within the country have been already granted and are currently in operation. Thus, the MTT or the NTC will only announce a public bid when a spot becomes available as a result of the expiry, 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 granting process of media concessions and permits depends on a series of variables that may differ from one specific case to another (especially when there is opposition from third parties, which may sometimes require the intervention of courts to settle such dispute). Under normal circumstances, the granting of LTS permits (ie, for CATV) may take between two and six months, while the granting of RBTS and OTBS concessions may take seven to eight months.

Regarding payable fees, the general rule is that media concessions and permits are granted on a free basis. Nevertheless, and owing to the fact that RBTS and OTBS services are granted through a public bid process, an auction may be needed to decide between equally suitable offers filed by two or more bidders.

The GTL provides, however, that the concessionaires, permissionaires and licensees that use the radio spectrum are subject to the payment of an official fee or duty, which will be collected by the state. For more information on this matter, see question 2.

### Foreign programmes and local content requirements

#### 20 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 on the matter. However, the NTC has the authority to determine, in a general manner, that up to 40 per cent of the transmissions of OTBS channels shall consist of domestic

productions. The National Music Law was enacted on 18 April 2015, setting forth that RBTS concessionaries must include at least 20 per cent of local content in their daily transmissions (prohibiting them from accumulating more than 50 per cent of such local content between 2am and 6am).

Other types of media not included in the above-mentioned considerations, are not subject to these regulations.

## Advertising

### 21 | 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 NTC has established that any kind of advertising of alcoholic beverages is forbidden during the hours allowed for minors (6am to 10pm);
- the Tobacco Law expressly prohibits advertising of tobacco products and elements of the brands related to them. In addition, the appearance of people smoking or pointing out favourable characteristics of the consumption of tobacco is forbidden for programmes broadcast live in television or radio, during hours allowed for minors. Finally, 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 also prohibited;
- the Consumer Protection Law prohibits false or misleading advertising;
- the Unfair Competition Law sanctions any conduct against the good faith that, through 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 its own and a third party's products and services; and
  - any comparative advertising that is not based in verifiable and genuine data;
- the Press Law grants a clarification and rectification right, by means of which every 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, for free. Likewise, any person or entity offended or unfairly alluded to by a RBTS, OTBS or CATV operator, shall have the right – only paying or providing for the respective materials – to directly require a true copy of the relevant transmission from the operators;
- according to the Law of Voting and Scrutiny, electoral propaganda may only be transmitted during the period running from 30 to three days before the relevant election or referendum. Additionally, this Law expressly prohibits the broadcasting of electoral propaganda by CATV operators;
- the Law on Nutritional Composition of Food and its Publicity prohibits advertising, directed to people under 14 years of age, of high-calorie and high-salt products, and requires that any

advertising displayed by mass media must contain a message promoting healthy lifestyle habits;

- Law No. 20,724, which came into effect on 14 February 2014, introducing amendments to the regulation of pharmacies and medications, states that advertising and other activities destined to inform the consumer of a pharmaceutical product, are only allowed for those products that can be sold without prescription, and pursuant to the provisions of the respective health registration; 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 scientific truth and lead to misrepresentation or deceit. Likewise, their advertising cannot attribute, directly or indirectly, therapeutic qualities, effects or characteristics to the products that they do not have or that are unverifiable.

Pursuant to the Digital Terrestrial TV Law (DTTVL), which came into effect on 29 May 2014, the NTCL empowers the NTC to establish restrictions and limitations to 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 organic regulation regarding advertising, companies engaged in this business along with 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 referred ethical code and arbitration court. This auto-regulatory approach has proven to be very successful in preventing abuse and conflicts in the advertising market. In fact, authorities have rarely been forced to take action in relation to an advertising issue.

Online advertising also lacks organic regulation, though it is subject to most of the rules referred to for non-online advertising. Nevertheless, on 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 on three main pillars: a code of conduct that ensures respect for user's rights; an alternative dispute resolution mechanism; and a trust trademark and logo, which the association's partners can use and be identified with.

## Must-carry obligations

**22** | 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?

With the enactment of the DTTVL, OTBS concessionaires are now legally obliged to transmit – at their own cost – at least four hours of cultural programmes per week, two of which must be broadcast during prime-time viewing hours.

Additionally, the NTC now has the authority to issue general and binding rules to oblige OTBS and CATV operators to broadcast campaigns of public and social interest, which will be determined by the Ministry Secretary-General of government and approved by the NTC. These campaigns shall not last more than five weeks a year, a term that may be renewed whenever necessary under considerations of particular importance and public interest. However, OTBS and CATV operators can charge the Chilean state for broadcasting campaigns that exceed this term, including a possible renewal of the same, with rates not higher and discounts not lower than those offered by them to any commercial advertising client.

Finally, the Law of Voting and Scrutiny regulates the propaganda that different candidates or political parties may broadcast during electoral periods.

## Regulation of new media content

**23** | 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 its delivery, which differs from the one regarding 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).

## Digital switchover

**24** | 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. To prepare future players, Subtel granted experimental permits to transmit digital television in different regions of Chile, in order for local channels to render OTBS services with high-definition contents in new localities. In addition, and to spread this technology throughout the country, since 2009, OTBS concessionaires provisionally started transmitting digital television by means of temporary permits that were renewed every year.

After almost six years of being discussed in the National Congress, the DTTVL came into effect in May 2014, marking a historic milestone for digital technology in Chile. This new regulation is contained in Law No. 20,750, which includes amendments to the NTCL regarding the progressive digital switchover imposed by the authorities of the field. The Law provides that within five years, all of the open television signals shall be digital and must be available in all 15 regions of the country for free, a process known as 'analogue switch-off'.

During the above-mentioned five-year term, OTBS operators that are digitalised are obliged to keep on transmitting the same content through their analogue and digital signals, which demonstrates that the digital switchover will be a gradual process in Chile. For more information on the obligations to which OTBS concessionaires are now subject owing to the DTTVL, see question 25.

Regarding the reallocation of the radio frequencies that will be freed by the digital switchover, Chile has been one of the first countries of the region to deal with the spectrum allocation and the denominated 'digital dividend'. This subject is strongly related to the public bid process – which has taken place in our country – destined to grant PTS concessions based on 4G technology.

On 4 April 2015, the Television Broadcasting Plan (TBP) was updated to implement the changes made by the DTTVL. Its principal goal is to accomplish a rational and efficient use of the radio electric spectrum in the television digitalisation process establishing the technical characteristics with which the digital signals must comply. On 10 March 2017, a public bid process for the allocation of Digital OTBS concessions was launched and it made 116 new frequencies available for such services.

## Digital formats

**25** | Does regulation restrict how broadcasters can use their spectrum?

Regarding OTBS services, the concession system established by the NTCL to assign the part of the spectrum required for the transmission of open television, used to restrict the utilisation of such spectrum only to the transmission of one television signal through an analogue transmission. With the enactment of the DTTVL, concessionaires will now be legally obliged to broadcast at least one signal in high definition, pursuant to the terms set forth by the authorities.

Likewise, holders of OTBS concessions in the very high frequency band can decide between maintaining such concession in the referred band, being able to transmit only one signal in analogue technology, or exercising their right to request a new concession – with their own means – in the ultra-high frequency band, set for digital television broadcasting services. In the first case, the relevant concessionaire will have 24 months from the entry into force of the amendment of the TBP (owing to the digital switchover), to amend all of its concessions to achieve the digital coverage. In the second scenario, the relevant concessionaire will have a maximum term of five years from the above-mentioned amendment to achieve digital coverage.

The DTTVL also authorises the broadcasters or holders of open television concessions to render complementary services such as multi-channelling, multi-programme, etc, over the part of the spectrum assigned to them.

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

The TBP sets forth that for every radio frequency channel of 6MHz, at least two television signals must be available (a main one and a secondary one). This rule was subject to much controversy before its approval and issuance.

## Media plurality

**26** | 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, the following must be taken into consideration regarding this matter.

Article 3 of the Law on Freedom of Opinion and Information and the Exercise of Journalism establishes plurality in the information system, by ensuring freedom to fund, edit, establish, operate and maintain mass media. Likewise, article 4 states that the National Budget Law will annually provide funds for the development of studies regarding

plurality in the national information system, which will be awarded by means of a public bid by the National Commission for Scientific and Technological Research.

Additionally, articles 1 and 14 of the NTCL also make reference to plurality. The first article conceives the 'proper performance' of television broadcasting services as the permanent respect for democracy, peace and plurality, among others; while the second sets out the obligation of the NTC to adopt measures and procedures to ensure the compliance of the principle of plurality in television programmes – broadcast by any channel – that contain news, opinion or political debate.

### Key trends and expected changes

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

The hottest topics in media regulation are the process of implementation of digital television – owing to the recent enactment of the DTTVL – and two bills currently being discussed in the National Congress that establish amendments to the Press Law, providing a new legal concept of electronic newspapers and categorising them as mass media, regulating the digital platforms in this regard.

The above-mentioned implementation process has not been exempt from controversy, especially owing to the opposition of OTBS operators to the regulations set forth in the DTTVL, based on the high costs that must be assumed by them to comply with the new legal requirements and to achieve the digital coverage within the established terms. Bills on electronic newspapers have also been subject to discussion, mainly because their approval could over-regulate the digital media market and interfere with the right to free speech.

The amount of local content that RBTS concessionaries include in their daily transmissions has been mandatorily increased (to a minimum of 20 per cent) with the approval of the new National Music Law (see question 20).

## REGULATORY AGENCIES AND COMPETITION LAW

### Regulatory agencies

28 | 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, representing the public interest and seeking 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.

### Appeal procedure

29 | 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 anticompetitive practices (including any practice affecting the telecoms and broadcasting sectors) are the responsibility of the Antitrust 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 Antitrust Court that imposed or dismissed measures requested by the parties or the FNE or the measures contemplated in article 26 of the Antitrust Law.

### Competition law developments

30 | Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

During 2017 and the first quarter of 2018, the following changes in competition law and cases were relevant to the antitrust authority:

- Law No. 20,945, which entered into force as of 1 June 2017, establishes a new pre-merger control regime by means of which concentration operations, performed by two or more economic agents, must be notified to the FNE if: the total sales in Chile by the economic agents that intend to concentrate are equal to or higher than Unidad de Fomento (UF) 1.8 million (units of account); and the sales, which have individually been performed in Chile by at least two of the economic agents that intend to concentrate the market, are equal to or higher than UF 290,000. Notwithstanding the foregoing, concentration operations that are not equal to or greater than the thresholds established by the FNE may, nevertheless, be voluntarily notified. These thresholds were determined by the FNE's Exempt Resolution NO. 667, dated 24 November 2016, and may be modified by such authority. Within 30 days from the opening of the investigation, the FNE must assess the operation and communicate its decision. The notifying parties may file a special review remedy, before the TDLC, against the FNE's resolution ordering the prohibition of the transaction.
- In September 2016, the TDLC dismissed the lawsuit filed by the National Consumer and Customer Association (Conadecus) against Telefonica, Claro and Entel PCS regarding an alleged abuse of dominant position of the incumbents. Conadecus stated that the incumbents participated in the 700MHz distribution public bid case with the purpose of grabbing radio frequency to prevent its effective and efficient use, violating the Supreme Court Ruling of 2009 regarding this subject. The TDLC dismissed the claim because it could not be stated that the incumbents hold a dominant position in the upstream market (access to mobile network) that could be transferred to the downstream market (retail commercialisation of mobile telephone services). Additionally, the TDLC pointed out that the Supreme Court Ruling did not establish a restriction to the amount of radio frequency an agent could hold (Ruling 154/2016). However, Conadecus submitted a remedy against the TDLC ruling, before the Supreme Court in October 2016. After almost two years, in June 2018, the Supreme Court issued its final ruling, stating that the incumbents incurred in anticompetitive conduct when participating in the 700MHz frequency bands public bid (see answer to question 16).
- In March 2017, the TDLC dismissed the lawsuit filed by Netline Mobile against Entel PCS and Telefonica regarding an alleged

infringement to a Supreme Court Ruling. In 2011, the Supreme Court ruled that the incumbents had to make a public offer of facilities or resale of plans to the mobile virtual networks operators based on general, uniform, objective and non-discriminatory standards. According to the TDLC: the defendants conducted public facilities offers; the conditions included in these offers had allowed the entrance of new competitors into the market; and the requirements of the offers could not be considered as discriminatory (Ruling 156/2017).

- In May 2017, the FNE initiated an investigation regarding the soft and hard blocking of mobile phone and data terminals. After carrying out a series of investigative measures, on 18 December 2017 the FNE decided to close this investigation under the condition that certain mobile phones manufacturers modified the criteria for enabling new bands on their phones and data terminals.
- In December 2017, the FNE initiated an investigation regarding domestic roaming agreements between mobile operators, as it considered that some of those agreements might generate risks of coordination that may affect the quality and coverage of licensed services, as they could discourage the deployment of networks of the operators in areas in which they operate through roaming.

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