

# Telecoms and Media

In 38 jurisdictions worldwide

*Contributing editors*

**Laurent Garzaniti and Natasha Good**



**2015**

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# Telecoms and Media 2015

*Contributing editors*

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**Freshfields Bruckhaus Deringer LLP**

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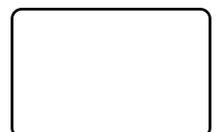


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# Chile

Alfonso Silva and Eduardo Martin

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## Communications policy

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### 1 Regulatory and institutional structure

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

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

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

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

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

### 2 Authorisation/licensing regime

**Describe the authorisation or licensing regime.**

As a general rule, to provide any telecommunications services, it is necessary to obtain a concession, permit or licence from the telecommunications authority, which are granted to the interested party on a 'first come, first served' basis. However, if there is a technical rule that allows only a limited number of concessions or permits of a certain service (eg, mobile telephony and other wireless services), the relevant concessions and permits shall be granted through a public 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, trunking, etc). These services must be designed in order to be interconnected with other PTS.

Limited telecommunications services (LTS), which are services aimed at satisfying specific telecommunications needs of determined companies, entities or persons who have previously requested and agreed the provisions of the services. This kind of service may not give access to the public telecommunications networks.

Intermediate telecommunications services (ITS), which are services provided through facilities and networks, 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.

Complementary telecommunications services (CTS), which are not telecommunications services in the strict sense of the definition but are additional features provided by PTS concessionaires or any other third party through the connection of equipment to the public networks.

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

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

The installation, operation and exploitation of LTS requires the prior obtaining of a permit granted through an exempt resolution issued by Subtel. These permits have a 10-year term and may also be renewed for equal periods at the request of the corresponding permissionaire. LTS permits that do not use the radio electric spectrum are granted for an indefinite period of time. Please note, however, that no permit is required in case of LTS whose transmissions do not exceed the limits of the real estate where they are installed or that exceed such limits using only infrastructure of ITS concessionaires.

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

Even though procedures for the granting of telecoms concessions, permits and licences are clearly defined in the GTL and its regulations, the duration of such procedures depends on a series of variables that may differ from one specific case to another (particularly when there is opposition from third parties, which sometimes may need to be resolved by the

courts). In standard cases, however, the granting of PTS or ITS concessions may take between three and eight months. The granting of LTS permits (ie, for cable television) may take between two and six months.

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

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

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

On 27 January 2009, the Supreme Court ruled that no operator may concentrate more than 60MHz in any band assigned for public mobile telephony services as a consequence of the 3G public bid. If any operator receives 3G spectrum and exceeds the 60MHz cap, the operator will have to surrender the spectrum either by returning it to the state or through a sale by public auction. The general terms and conditions for the public bid were issued by Subtel in April 2009, confirming the spectrum cap fixed by the Supreme Court and regulating the assignment of three spectrum blocks of 30MHz each with national coverage (90MHz overall). Considering that there were already three operators which could not increase their spectrum due to the cap (Entel had already 60MHz and Movistar and Claro 55MHz each), this became an opportunity for new entrants.

The public bid took place during 2009 and, after a public auction, Nextel obtained two concessions of 30MHz each and VTR (a subsidiary of Liberty Media) obtained the remaining 30MHz, permitting the entrance of two new competitors into the market of next generation mobile services.

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

Finally, during 2014 a new public bid process took place in Chile for the granting of public telecommunication service concessions based on 4G technology for the provision of fixed or mobile data transmission public services in the 713–748MHz and 768–803MHz frequency bands. After a public auction among the bidders, Subtel announced that Movistar, Entel and Claro (the incumbents that participated in the public bid process) 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 in order to cover the needs of public protection and help 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 (in January 2009 in the 3G awarding process) was not being considered 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, 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.

It is expected that the 700MHz band will be operational at the end of 2017.

### 3 Flexibility in spectrum use

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

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

The RFs assigned to a particular operator may not be traded or transferred separately from the concession or permit to which the respective RFs are embedded. However, there is a new 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. For more details, see question 12.

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

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

### 4 Ex-ante regulatory obligations

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

In general, the provision of any communications service, except for 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:

#### Telephony Numbering Technical Fundamental Plan

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

#### Law of Number Portability

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

#### Interconnection

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

#### Television

Suppliers of open television broadcasting services (OTBS) services need a concession granted by the National Television Council (NTC) through a public bid process, while cable television (CATV) operators need a permit

granted by Subtel. For further details, please see question 15. For information regarding content restriction, please see question 18.

## Internet

### **Law of Internet and Net Neutrality**

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

## Radio

There is regulation regarding the granting of RBTS concessions to foreign investors and the nationality of several executive officers of free radio broadcasting concessionaires (see question 14).

## 5 Structural or functional separation

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

Since 10 December 2010, Law No. 20,478 has been in force, which, among other things, allows the operation of infrastructure supplier companies by modifying the concept of ITS in the GTL, including within this concept those concessionaires who only provide physical infrastructure for telecoms services. This new law also simplifies the required procedure for modifying the relevant concessions regarding this type of service. The requirements for obtaining, installing, operating and exploiting such types of concession are established in a special regulation issued by the MTT by means of Supreme Decree No. 99, in force from 6 July 2012.

## 6 Universal service obligations and financing

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

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

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

## 7 Number portability

### **Describe the number portability regime in your jurisdiction.**

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

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

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

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

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

## 8 Customer terms and conditions

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

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 exceeds 48 continuous or discontinuous hours during a month and this is not due 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 of 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. No 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 the 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.

## 9 Net neutrality

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

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

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

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

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

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

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

The GTL contemplates the creation of a Telecoms Development Fund with the purpose of promoting the increase of telecoms services coverage in poor or geographically isolated areas. The fund contemplates subsidising: projects for publicly available telephones and calling centres; community 'infocentres' (these projects shall have the purpose of promoting information and communication technologies, including connection to internet); local radio and television services; and any other project for telecoms services that may benefit the community.

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

## 11 Data protection

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

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

Furthermore, article 19(4) of the Chilean Constitution establishes the right of 'respect and protection to private and public life and to the honour of a person and his family'; and article 19(5) establishes the right of 'non-violation of home and of any way of private communication', setting forth that private communications and documents may only be intercepted, opened or registered in cases and manners determined by the law. Additionally, the Personal Data Protection Law establishes, as a general principle, that save for certain specific exceptions (eg, data available from sources accessible to the public, etc), it is mandatory to obtain the prior written consent of the data subject to gather and process personal data. If not, the breaching party may be forced to indemnify the data subject for any damages caused by such breach.

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

## 12 Key trends and expected changes

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

The main hot topic in communications regulation in these days is the new public bid process for the distribution of the 700MHz band, which was freed up as a consequence of the digital television switchover. This band would be reallocated and made available to public telecommunications

services concessions based on 4G technology, except for a portion of 20MHz that has been reserved for public security and emergency services.

As mentioned before, 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 services in the 713-748MHz and 768-803MHz frequency bands. For more details, see question 2.

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

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

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

Furthermore, during 2013, Law No. 20,704 was published. This new law established the gradual elimination, during 2014, of the national long-distance system. On 29 March 2014, the implementation of this measure begun on the region of Arica and Parinacota, finalising on 9 August 2014, in the Metropolitan region.

Finally, there is also another new 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 previous 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.

## Media

### 13 Regulatory and institutional structure

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

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

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

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

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

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

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

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

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

#### 14 Ownership restrictions

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

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

Any material change in the ownership of any media entity 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 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 which 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 related to cross-ownership, nor any plan or suggestion to change the regulation applicable to this matter.

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

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

#### 15 Licensing requirements

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

A concession granted by means of a supreme decree issued by the NTC – through a public bid process – is necessary in order 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 public bid when a spot becomes available as a result of the expiration, cancellation or waiver of an existing concession. On the other hand, a permit granted by Subtel is necessary in order 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 in order 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 due to the fact that RBTS and OTBS services are granted through a public bid process, an auction may be needed in order 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.

#### 16 Foreign programmes and local content requirements

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

There are no current regulations 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. Additionally, a bill is currently being discussed in the National Congress in order to oblige RBTS concessionaires to 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.

#### 17 Advertising

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

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

- advertising transmitted through OTBS or CATV must comply with the 'proper performance' requirements contained in the NTCL;
- the NTC has established that any kind of advertising of prohibited drugs is forbidden;
- the Tobacco Law 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 broadcasted 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 which, 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 parties' 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 that the products 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, in September 2012, the partners of an independent association that is part of a worldwide affiliate network of the Interactive Advertising Bureau (IAB), presented a new mechanism of online advertisement auto-regulation, called 'System of Trust'. The main objective of this system, established by IAB Chile, is to regulate the conduct of those who participate in the online market, and it is based 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.

## 18 Must-carry obligations

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

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 in order 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 which 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.

## 19 Regulation of new media content

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

There is no specific regulation in connection with new media content and 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).

## 20 Digital switchover

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

In September 2009, Subtel communicated the decision to adopt the digital television technology standard ISDB-T with MPEG4. This standard was created in Japan and modified in Brazil. In order 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 (HD) contents in new localities. In addition, and in order 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.

Finally, after almost six years of being discussed in the National Congress, the DTTVL came into effect in May 2014, marking a historic milestone for the 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 in the term of 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 due to the DTTVL, see question 21.

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, see question 2.

## 21 Digital formats

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

Regarding OTBS services, the concession system established by the NTCL in order 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, concessionaries 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 VHF band can decide between (i) maintaining such concession in the referred band, being able to transmit only one signal in analogue technology, or (ii) exercising their right to request a new concession – with their own means – in the UHF 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 Television Broadcasting Plan (due to the digital switchover), in order 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, in order to achieve the referred 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, due 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.

## 22 Media plurality

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

The regulation of media plurality is not organic in Chile; however, 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 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 in order to ensure the compliance of the principle of plurality in television programmes – broadcast by any channel – which contain news, opinion or political debate.

## 23 Key trends and expected changes

### 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 the digital television – due 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.

The above-mentioned implementation process has not been exempt of controversy, especially due 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 in order to comply with the new legal requirements and to achieve the digital coverage within the established terms. In connection with the bills on electronic newspapers, they have also been subject to discussion, mainly because their approval could over-regulate the digital media market and interfere with the right of free speech.

Regarding expected changes, the amount of local content that RBTS concessionaries currently include in their daily transmissions could be mandatorily increased by the approval of the bill – currently being discussed in the National Congress – which seeks to regulate this matter.

## Regulatory agencies and competition law

### 24 Regulatory agencies

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

The antitrust authorities are the Antitrust Court (TDLC) and the National Economic Prosecutor (FNE). Both are responsible for enforcing Chile's Antitrust Law. The TDLC is an independent entity (jurisdictional) with the fundamental mission of ruling on all cases filed by the FNE or private individuals. It is also in charge of issuing specific or – occasionally – general guidelines for the enforcement of antitrust regulations. The FNE is an independent administrative agency in charge of investigating any violations of the Antitrust Law, 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 anti-trust regulators (TDL and FNE) and there are no jurisdiction conflicts, because each body has specific duties and powers. The final decisions of the antitrust authorities are subject to review by the Supreme Court of Justice ensuring the consistent application of the law.

### 25 Appeal procedure

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

The GTL and the NTCL establish specific procedures under which telecoms regulators' decisions may be challenged. These procedures generally

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allow the possibility to appeal such decisions before the ordinary courts of justice including, ultimately, the Supreme Court.

Resolutions in connection with anti-competitive practices (including any practice affecting the telecoms and broadcasting sectors) are the responsibility of the 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.

## **26 Competition law in the communications and media sectors**

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

During 2014, there were no Antitrust Court decisions regarding mergers or antitrust cases in the telecoms and media markets. Nevertheless, several claims have been filed by parties and the FNE before the Antitrust Court:

- (i) in November, Telestar Móvil SA against Entel, Claro and Telefónica for alleged violation of decision 104/2010 and abuse of dominance by not making a facilities offer to MVNOs (in this case, the Antitrust Court dismissed the claim filed by the FNE against Entel, Claro and Telefónica. The Supreme Court reviewed the decision and imposed a fine on the defendants and ordered them to make a facilities offer to MVNOs);

- (ii) in October, Costetel Ltda against Telefónica for alleged exclusionary practices;
- (iii) in October, Telecomunicaciones Max Ltda against Entel, Claro and Telefónica for alleged violation of Decision 104/2010 and abuse of dominance by not making a facilities offer to MVNOs;
- (iv) in July, the FNE against Telefónica for alleged violation of General Instruction No. 2 (in this Instruction, the Antitrust Court ordered that companies shall not commercialise plans with different pricing for on-net calls and off-net calls or deliver a different amount of minutes (non-discrimination between prices of on-net/off-net calls). It was later amended in order to exempt calls made within 'group plans' - plans allowing calls between clients of the same mobile company);
- (v) in March, Conadecus against Entel, Claro and Telefónica for allegedly surpassing the permitted radioelectric spectrum cap; and
- (vi) in January 2015, the FNE against Claro also for alleged violation of General Instruction No. 2.

In regard to (iv) and (vi), in December and July 2014, the Antitrust Court approved the settlements between the FNE and Telefónica and between the FNE and Claro, respectively. In both cases, the companies were obliged to modify their commercial policies in order to comply with General Instruction No. 2.

## Getting the Deal Through

Acquisition Finance	Dispute Resolution	Licensing	Public Procurement
Advertising & Marketing	Distribution & Agency	Life Sciences	Real Estate
Air Transport	Domains & Domain Names	Mediation	Restructuring & Insolvency
Anti-Corruption Regulation	Dominance	Merger Control	Right of Publicity
Anti-Money Laundering	e-Commerce	Mergers & Acquisitions	Securities Finance
Arbitration	Electricity Regulation	Mining	Securities Litigation
Asset Recovery	Enforcement of Foreign Judgments	Oil Regulation	Ship Finance
Aviation Finance & Leasing	Environment	Outsourcing	Shipbuilding
Banking Regulation	Foreign Investment Review	Patents	Shipping
Cartel Regulation	Franchise	Pensions & Retirement Plans	State Aid
Climate Regulation	Gas Regulation	Pharmaceutical Antitrust	Structured Finance & Securitisation
Construction	Government Investigations	Private Antitrust Litigation	Tax Controversy
Copyright	Insurance & Reinsurance	Private Client	Tax on Inbound Investment
Corporate Governance	Insurance Litigation	Private Equity	Telecoms & Media
Corporate Immigration	Intellectual Property & Antitrust	Product Liability	Trade & Customs
Cybersecurity	Investment Treaty Arbitration	Product Recall	Trademarks
Data Protection & Privacy	Islamic Finance & Markets	Project Finance	Transfer Pricing
Debt Capital Markets	Labour & Employment	Public-Private Partnerships	Vertical Agreements

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