





## Telecoms and Media 2010

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# Chile

Alfonso Silva and Eduardo Martin

Carey y Cía Ltda

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## Communications policy

### 1 Policy

Summarise the regulatory framework for the telecoms and media sector. What is the policymaking procedure?

In connection with the regulatory framework for the telecoms and media sector in Chile, there are two general laws to take into account, the General Telecommunications Law (the GTL) and the National Television Council Law (the NTCL).

The GTL 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;
- tariffication procedures for certain telecoms services;
- the fees for the use of spectrum; and
- breaches and sanctions.

The NTCL mainly rules on the following matters:

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

For details on this, please see question 3.

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

### 2 Convergence

Has the telecoms-specific regulation been amended to take account of the convergence of telecoms, media and IT? Are there different legal definitions of 'telecoms' and 'media'?

No. There has been no amendment of the GTL specifically addressing this issue. Subtel has disclosed in the media, however, that the Chilean government is analysing the issue and that convergence is a key element of the government's telecommunications policy.

There are different legal definitions of telecoms and media.

According to the GTL, 'telecoms' are any transmission, emission or reception of signs, signals, writs, images, sounds and information of any nature, whether by physical lines, radio electricity, optical means or other electromagnetic systems.

In turn, pursuant to the Law on Freedom of Speech, Information and Journalism, 'media' (*medios de comunicación social*) comprises any means suitable for the transmission, disclosure, spreading or publication in a stable or periodical manner, of texts, sounds or images aimed at the public, without regard of the platform or instrument used in doing so. Therefore, some media players may also be telecommunications concessionaires or permissionaires (open and cable television channels, radio broadcasting operators, etc).

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### 3 Broadcasting sector

Is broadcasting regulated separately from telecoms? If so, how?

As a general rule, the broadcasting sector is regulated separately from the telecoms sector. In some aspects, however, these markets are subject to a regulatory overlap.

From a technical standpoint, telecoms, radio broadcasting and cable television (CATV) operators are subject to the GTL. For this reason, the MTT, through Subtel, is the entity in charge of granting, renewing and modifying telecoms concessions and CATV permits and supervising that telecoms and CATV operators comply with the provisions of the GTL. Subtel's supervisory authorities extend only to technical aspects of the concession and 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 both the broadcasting (radio and television) and telecoms operators.

In turn, the NTC is in charge of granting, renewing and modifying open television broadcasting services (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 NTCL defines proper performance as the permanent respect of the moral and cultural values of the nation, the dignity of persons, the protection of the family, pluralism, democracy, peace, the protection of the environment and spiritual and intellectual education of children and youth.

The supervisory authorities of the NTC in connection with the content transmitted by OTBS and CATV operators are exercised ex-post. In other words, 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 there is no entity specifically in charge of supervising the content of radio broadcasting telecoms services (RBTS) transmissions, there are several legal provisions that directly or

indirectly regulate the content of all kinds of broadcasting transmissions (including OTBS, CATV and RBTS). These legal provisions include the Criminal Code (especially in cases of slander, libel or defamation), the Law on Freedom of Speech, Information and Journalism, the Consumers' Protection Law and the Elections Law.

### Telecoms regulation

#### 4 WTO Basic Telecommunications Agreement

Has your jurisdiction committed to the WTO Basic Telecommunications Agreement and, if so, with what exceptions?

Chile committed to the WTO Basic Telecommunications Agreement with no exceptions, apart from specifying what is understood in Chile by the term 'basic telecoms'.

#### 5 Public/private ownership

What proportion of any telecoms operator is owned by the state or private enterprise?

At present, there is no relevant public ownership in any of the main telecoms operators; one national OTBS concessionaire, Televisión Nacional de Chile, is wholly owned by the state. Although it is not a telecoms operator, one national circulation newspaper, *La Nación*, is also 100 per cent owned by the state.

#### 6 Foreign ownership

Do foreign ownership restrictions apply to authorisation to provide telecoms services?

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.

Without prejudice to the foregoing, 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 free radio broadcasting concessionaires must be Chilean citizens. The chairperson, managers, administrators, legal representatives and all the board members of OTBS concessionaires must also be Chilean citizens.

#### 7 Operator exclusivity and limits on licence numbers

Are there any services granted exclusively to one operator or for which there are only a limited number of licences? If so, how long do such entitlements last?

In the past, some telecoms operators had exclusivity to provide particular services (eg, fixed telephony and long-distance state monopolies). However, under the current GTL, telecoms concessions and permits are not limited as to their number, type of service or geographical area and, therefore, it is possible to grant two or more concessions or permits for the provision of the same service in the same location.

A limited number of licences are granted only where technical limitations exist (ie, mobile telephone services, LMDS, WLL, WIMAX and other wireless services), in which case only the number of concessions permitted by the technical regulation of the respective service may be granted for a single service area. In the latter case, concessions will be granted through a public bidding process.

For details on the duration of licences, please see question 15.

#### 8 Fixed, mobile and satellite services

Comparatively, how are fixed, mobile and satellite services regulated? Under what conditions may public telephone services be provided?

Fixed, mobile and satellite services are generally considered by Chilean telecoms regulations as public, intermediate or limited telecoms services (PTS, ITS or LTS), as the case may be. Therefore, except for the technical rules established specifically for each of them and for the circumstance that, 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.

Only holders of a telephony concession may provide publicly available telephone services. In addition, if the telephone is located in a public area, the corresponding operator will have to previously obtain an authorisation from the entity in charge of the respective area (eg, the city hall, the Ministry of Public Works, the Ministry of National Properties). ITS concessionaires may provide long distance service through public phones located in calling centres available for the general public.

#### 9 Satellite facilities and submarine cables

In addition to the requirements under question 8, do other rules apply to the establishment and operation of satellite earth station facilities and the landing of submarine cables?

Except for certain satellite systems that operate in Chile under international agreements subscribed to by the Chilean state, satellite earth station facilities and submarine cable operators are subject to the same general rules applicable to any Chilean telecoms concessionaire.

#### 10 Radio frequency (RF) requirements

For wireless services, are radio frequency (RF) licences required in addition to telecoms services authorisations and are they available on a competitive or non-competitive basis? How are RF licences allocated? Do RF licences restrict the use of the licensed spectrum?

Wireless service concessions generally include the RFs necessary for the provision of the respective service; MVNOs are an exception to this. For more information, please see question 24. Therefore, wireless services concessionaires do not need special RF licences or permits (in addition to their telecoms service concessions or permits) to provide their services to the public. As such, the GTL establishes an equal and non-discriminatory right of access to telecoms to all the inhabitants of the country. Any person may apply for telecoms concessions, permits and licences according to the terms and conditions of the GTL and its ancillary and complementary regulations.

Telecoms concessions and permits are generally granted to the interested party on a 'first come, first served' basis. However, if there is a technical rule that allows only a limited number of concessions or permits of a certain service (eg, mobile telephony and other wireless services), the relevant concessions and permits shall be granted through a public bidding process. OBTS and RBTS concessions are always granted through public bidding processes.

Telecoms concessions and permits are usually granted on a free basis, but may be subject to auction by the telecoms authorities only in cases when the relevant concessions must be granted through a public bidding process due to the fact that there is a technical rule that allows only a limited number of concessions or permits, and two or more bidders are equally suitable. In cases of RBTS concessions, ties produced between two or more bidders are solved through public draw.

**11 Spectrum trading**

Is licensed RF spectrum tradable?

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.

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 RBTS concessions, such authorisation cannot be granted within two years from the date of the legal initiation of the services under the concession.

**12 Next-generation mobile services**

Is there any regulation for the roll-out of 3G, 3.5G or 4G mobile services?

In September 2000, Subtel issued a technical rule reserving the 1,710-1,770MHz and 2,110-2,170MHz bands for third generation mobile services (3G) to be granted through a public bidding process.

On 27 January 2009, the Supreme Court ruled that no operator may concentrate more than 60MHz in any band assigned for public mobile telephony services as a consequence of the 3G public bid. If any operator receives 3G spectrum and, for such reason exceeds the above-mentioned 60MHz cap, such operator will have to surrender such 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.

Finally, 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.

**13 Fees**

What fees are payable for each type of authorisation?

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

The GTL provides, however, 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.

Official fees or duties are charged from 1 January of each year, and must be paid in the second half of the corresponding year. 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.

**14 Authorisation timescale**

Are licences or other authorisations required? How long does the licensing authority take to grant such licences or authorisations?

As a general rule, to provide any telecommunications services, it is necessary to obtain a concession, permit or licence from the telecommunications authority.

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 of justice). In standard cases, however, the granting of PTS, ITS or RBTS concessions may take between three and eight months (RBTS concessions are always granted through public bid). The granting of limited telecoms service (LTS) permits (ie, CATV) may take from two to six months. Finally, the granting of OTBS concessions may take from seven to eight months (OTBS concessions are also always granted through a public bid). As already mentioned, third party oppositions may substantially increase the above-mentioned terms. Such oppositions may be filed by any interested parties that feel that the granting of the concession might damage any of their rights.

**15 Licence duration**

What is the normal duration of licences?

Telecoms concessions and permits have a legally fixed duration. Under the GTL, PTS and ITS concessions are granted for a 30-year period, renewable for identical periods if requested by the concessionaire. RBTS concessions are granted for a 25-year period, after which the concessionaire will have priority for renewal. Concessions for the provision of OTBS are also granted for a 25-year period. Permits for the provision of LTS are granted for a 10-year period and may be renewed upon the request of the interested party, with the exception of permits for the provision of limited television services that do not use the radio-electric spectrum (ie, CATV), in which case the duration is indefinite.

**16 Modification and assignment of licence**

How may licences be modified? Are licences assignable or able to be pledged as security for financing purposes?

As a general rule, telecoms concessions and permits may be amended in almost all aspects. However, the following elements of the essence of the concessions may not be amended:

- PTS and ITS concessions: the type of service and the duration of the concession.
- RBTS concessions: the type of service, service area, duration of the concession, the term to start and complete the relevant works related to the concession, the term to start the transmissions, and the power and frequency of the concession transmission.

Additionally, all supreme decrees granting concessions must indicate the above-mentioned essential elements and the following non-essential elements:

- PTS and ITS concessions: the holder of the concession, service area, technical characteristics of the facilities specified in the technical plan corresponding to the type of service, term for the initiation and conclusion of relevant works related to the concession, term for the initiation of the services, location of the radio stations (excluding the mobile and portable ones) and the power, frequency and technical characteristics of the systems.
- RBTS concessions: the holder of the concession, location of the studios, the location of the transmission plant, location and technical characteristics of the system and radio links between the transmission plant and the studios.

The non-essential elements indicated in the last two bullet points above may be amended at the request of the interested party through the issuance of an amendment supreme decree. Applications for the amendment of concessions must be submitted directly to the MTT.

The amendments of PTS and ITS concessions referring to the service area, power, frequency and the technical characteristics of the systems, and amendments to RBTS concessions referring to the location of the transmission plant and the location and technical characteristics of the system, are subject to a procedure similar to that applicable to the granting of the concessions set out in articles 15 and 16 of the GTL; this includes the possibility that third parties may file objections or oppositions to the corresponding concession amendment application. In serious and urgent cases, however, the MTT, through a grounded resolution, may provisionally authorise the amendment of a concession, regardless of what may be ultimately resolved by the MTT.

The amendment of non-essential concession elements, other than those specified under the last two bullet points above, may be performed after notifying Subtel.

An OTBS concession may be amended in all of its aspects (provided that the relevant amendment is feasible from a technical and practical standpoint). To amend an OTBS concession, the concessionaire must previously file a written application before the NTC. The NTC shall forward a copy of the application to Subtel if the amendment refers to technical aspects of the concession. Subtel (if required) shall review the amendment application and communicate any observation that it may have within 30 days. If Subtel or the NTC have observations, the applicant shall correct them within 15 days. If there are no observations, or such observations were corrected, the NTC shall resolve the amendment application. Any NTC resolution rejecting the amendment application or affecting the interests of third parties is subject to a procedure similar to that applicable to the granting of OTBS concessions set out in article 27 of the NTC law; this includes the possibility that third parties may file objections or oppositions to the corresponding concession amendment application.

As mentioned above, telecoms and RBTS concessions and permits may be assigned, transferred or leased only with the prior authorisation of Subtel, which cannot refuse such authorisation without reasonable cause. In case of RBTS concessions, however, 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. Additionally, as mentioned above, in the case that RBTS concessions requested or acquired by entities that are controlled more than 10 per cent by foreign investors, such RBTS concessions may be granted to or acquired by the respective entity only if it 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). The violation of this requirement leads to the cancellation of the respective concession by the effect of the law.

OTBS concessions may be assigned, transferred or leased only with the prior authorisation of the NTC, which cannot refuse such authorisation if the potential assignee or lessee complies with the requirements established in the NTCL to become an OTBS concessionaire.

The pledge of telecoms, RBTS and OTBS concessions and permits is not expressly regulated. But Subtel (using its legal authority to interpret the GTL and its regulations) has expressly declared that no authorisation or approval is necessary to execute a pledge agreement over telecoms or RBTS concessions or permits. However, authorisation from Subtel (in the same terms mentioned above) will be required in the event of foreclosure of the pledge, and it has to be obtained before the transfer of the pledged telecoms or RBTS concession or permit to the third party awarded in the auction.

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

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#### 17 Radio spectrum

Is there a regulatory framework for the assignment of unused radio spectrum (refarming)? Do RF licences generally specify the permitted use of the licensed spectrum or can RF licences for some spectrum leave the permitted use unrestricted?

There are no specific regulations on spectrum refarming. Subtel is entitled, however, as legal manager of the Chilean radio-electric spectrum, to take measures and issue regulations aimed at improving efficiency in the use of the spectrum. This occurred, for example, in the 1990s when Subtel established a 12.5KHz canalisation for the trunking frequencies instead of the 25KHz canalisation in force until then. Likewise, in 2005, the MMDS CATV permissionaires that operated in the 2.6GHz band were forced by the authority to migrate to another frequency band. The same situation occurred with certain frequencies that will be used for 3G and digital television services.

Without prejudice to the foregoing, any measure adopted by Subtel in this regard shall respect the rights already acquired by the telecoms operators in connection with their concessions or permits.

The GTL establishes an equal and non-discriminatory right to use spectrum, but always through a telecommunications concession, permit or licence. 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 more information on this matter, please see question 10.

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#### 18 Cable networks

Is ownership of cable networks, in particular by telecoms operators, restricted?

There is no specific restriction in Chile regarding the ownership of CATV operators or networks by other telecoms service providers. In fact, the main CATV operator has for a long time offered a triple pack connection (CATV, local telephony and internet access) to the public. Chilean authorities, however, might restrict ownership 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.

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#### 19 Local loop

Is there any specific rule regarding access to the local loop or local loop unbundling? What type of local loop is covered?

Unbundled access to the local loop is not currently regulated in a specific manner in the GTL or its ancillary regulations. Subtel, however, has been planning to issue a regulation addressing the unbundling of the local loop in a specific manner.

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#### 20 Internet services

How are internet services, including voice over the internet, regulated?

Internet access services are usually considered as a class of 'telecoms complementary services' and, hence, are not specifically regulated.

According to the GTL, PTS concessionaires or any other person or entity, may provide complementary services through public telecoms networks. Such complementary services consist of additional services that are provided through the connection of the equipment of complementary service providers to the public telecoms networks. Equipment should comply with the technical regulations issued by Subtel and should not alter the essential technical characteristics and capabilities of the telecoms networks to which they are connected.

The provision or commercialisation of complementary services does not require any concession or permit nor any contractual or verbal agreement or authorisation from any PTS concessionaire or government authority (including Subtel). Nevertheless, before the start of the complementary services, Subtel must issue a statement certifying that the respective complementary service provider's equipment complies with the above-mentioned technical regulations. Subtel must issue this statement within 60 working days of its receipt of the interested party's request; otherwise the corresponding complementary service provider would be authorised to initiate its services by the mere effect of the law.

PTS concessionaires must not perform any act that implies discrimination in favour of any complementary telecoms services provider, or that may cause any alteration to free competition in the market.

In connection with VoIP, in June 2008, Subtel issued a long-awaited regulation regarding such service. After a six-month wait, this regulation entered in force on 15 December 2008. The new regulation establishes that a PTS concession is required to provide telephone services over the internet, when the corresponding user has the possibility to make calls to and receive calls from the PTSN. Consequently, communications entirely done over the internet would not require any concession or permit. The same thing occurs with one-way internet-PTSN communications (which do not allow the reception of communications from the PTSN).

## 21 Internet service provision

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers?

In Chile there is no specific regulation in connection with content delivered through the internet or the liability of the providers that take part in such delivery.

However, to provide their services, ISPs (like any internet provider) still have to comply with general regulations such as constitutional rights, criminal laws, privacy laws, etc, and therefore, in certain conditions, they may be considered liable for the data they deliver.

## 22 Financing of broadband and NGA networks

Is there a government financial scheme to promote broadband penetration?

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.

In December 2007, the Chilean government launched a programme called 'Digital Strategy for 2007-2012', which was prepared by the Committee of Ministers for Digital Development after extensive work carried out with participants from the business sector, universities, civil society and the government itself. The objective of this programme is to contribute to the economical and social development of the country, through the implementation of the potential offered by information and communication technologies (ICTs), in

order to improve the quality of education, transparency, increase productivity and competition, and make a better government with more participation and commitment from citizens.

The Digital Strategy has the following goals for 2007-2012:

- double broadband connections covering the whole national territory;
- double investment in ICTs;
- develop a digital legal and regulatory framework that integrates the private and public sectors;
- strengthen the government's role in the acquisition of ICTs to improve the services' offer, promote the ICT's industry and improve the e-government;
- update legislation on intellectual property, personal data, consumers' rights, cybercrime, etc;
- develop new ICT service areas focused on the relations between companies and citizens with the government;
- promote the development and use of ICTs in Chile's main industries, such as mining, forestry, aquaculture and tourism;
- locate Chile in the pole position of the region for the development of remote technological services;
- apply ICTs for the improvement of public and private transparency and the implementation of e-government;
- use ICTs for the inclusion of women in employment and to improve their participation; and
- increase funds for ICT research and development in universities and study centres.

Finally, also in December 2007, the Chilean government, acting through Subtel, and several of the most important telecoms operators of the country, signed the Public-Private Agreement for the Digital Connectivity. Pursuant to such agreement, all of the parties involved undertake to join their best efforts and to work in a coordinated manner to achieve the following goals on or before the end of 2010:

- 2 million new connections to the internet (at an average speed of 1 mbps);
- 10 per cent of the homes of the poorest two-fifths of the population to be connected to the internet;
- 100 per cent of rural schools to be connected to the internet; and
- access to the internet for 95 per cent of the rural population (at prices similar to those offered in urban areas).

The parties defined the following as areas of work to achieve the above-mentioned goals:

### Regulation

- Flexibility of the regulatory framework;
- promotion of investment in networks and of technological competition; and
- reduction of regulatory barriers that hinder investment.

### Competition and new technologies

- Commitment to more investment, more competition and more services.

### Telecoms Development Fund

- Public-private work in the preparation of the fund bids; and
- notices of inquiries before issuing the bids terms and conditions.

### Indicators and follow up

- Preparation of an objective compliance measurement tool;
- strengthening the government's support of the social responsibility actions carried out by the telecoms operators; and
- coordinate efforts to increase the impact of the social responsibility actions carried out by the telecoms operators.

**23 Interconnection and access**

How is interconnection regulated? Can the regulator intervene to resolve disputes between operators? Are wholesale (interconnect) prices controlled and, if so, how? What are the basic interconnect tariffs? Are wholesale access services regulated, and, if so, which and how?

According to article 25 of the GTL, 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.

For these purposes, article 8 of the Public Telephone Regulation states that PTS of the same type are all those services technically compatible among themselves.

The general principle governing interconnection in the GTL is that the new concessionaire pays the costs and expenses necessary to interconnect its network to that of the pre-existing concessionaire.

According to the GTL, violation of the interconnection obligation may be punished by the MTT with fines of up to approximately US\$650,000. Each day in which the corresponding concessionaire fails to comply with its interconnection obligation after Subtel's requirement to do so will be considered a separate violation to the GTL. Additionally, according to the Telecommunication Service Claims Regulation, at the request of an affected party, Subtel is empowered to resolve any claim involving telecoms operators (including claims related to interconnection matters). Subtel's decisions, however, are challengeable before the courts of justice.

As a separate matter, the fees and tariffs applicable between the concessionaires for services rendered through the interconnection (particularly access charges) shall be fixed every five years by the authorities in accordance with a tariff-setting procedure (based on the cost structure and expansion plans of the respective operator) set out in articles 30 to 30-J of the GTL.

**24 Mobile virtual network operator (MVNO) traffic**

Are any mobile network operators expressly obliged to carry MVNO traffic?

According to the regulations issued by Subtel, mobile resellers or MVNOs require a PTS concession for mobile telephony and, due to the fact that such concessions are granted without spectrum, they also need access to the infrastructure and spectrum of another concessionaire in order to deliver mobile telephony services. Such access shall be granted by the incumbent operators in accordance with the commercial agreements that may have been voluntarily reached between the concessionaire that has the concession over the spectrum and the corresponding MVNO.

**25 Mobile call termination**

Does the originating calling party or the receiving party pay for the charges to terminate a call on mobile networks? Is call termination regulated, and, if so, how?

Since 1994, the calling party shall pay for the charges to terminate a call on mobile networks ('calling party pays' or CPP system). As mentioned in question 23, the mobile operator's access charges are fixed every five years by the authorities in accordance with a tariff-setting procedure set out in the GTL.

From a cash flow standpoint, the originating network operator shall pay the access charges to the mobile network operator. In turn, the originating network operator is entitled to request the reimbursement of such charges from the subscriber that made the call.

**26 International mobile roaming**

Are wholesale and retail charges for international mobile roaming regulated?

No specific regulation has been issued in this regard.

**27 Retail tariffs**

Are retail tariffs regulated? If so, which operators' tariffs are regulated and how?

As a general rule, the tariffs or fees for the PTS and the ITS may be freely established by the respective service providers. But in the event that the Competition Court resolves that the conditions prevailing in the fixed or long-distance telephone market (excluding the mobile telephone service and the signalling, transmission and switching services provided as ITS or as private circuits) are not sufficient to guarantee free competition, the tariffs or fees of the telecoms services and operators referred to in the Competition Court's resolution shall be set by the government through a supreme decree. The tariffs shall be set by the government for a five-year period, based on an 'efficient company' model. The tariff-setting procedure currently contemplates the participation of third parties, which may express their points of view to Subtel through the procedure contemplated in the relevant regulations.

**28 Customer terms and conditions**

Must customer terms and conditions be filed with, or approved by, the regulator or other body? Are customer terms and conditions subject to specific rules?

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

**29 Number portability**

Is number portability across networks possible? If so, is it obligatory?

Number portability has not been regulated or implemented in Chile yet and therefore, it is still not possible. However, this is a hot topic in the telecoms market, due to the fact that Subtel has initiated the process towards the full implementation of number portability as an obligatory feature during the second half of 2010.

In this context, on 20 August 2009, Subtel published in the Official Gazette an Exempt Resolution which sets the procedures, schedules, rules and principles that shall guide the implementation process, creating the Portability Technical Committee as the entity in charge. On 23 January 2010, Subtel published basic technical specifications for the implementation of number portability. It is expected that the implementation of number portability will be achieved no later than the first half of 2011.

**30 Universal service obligations and financing**

Are there 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 Strategy for 2007-2012' is inspired in the achievement of universal service; and
- the Telecoms Development Fund contemplated in the GTL is focused in universal service.

Please see question 22 in connection with the last two bullets points above.

**31 Changes to telecoms law**

Are any major changes planned to the telecoms laws?

On 11 March the new president of Chile, Sebastián Piñera, took office for a period of four years. In the political agenda for his presidential period, the following matters were considered in the field of telecommunications:

- the creation of a Telecommunications Superintendency focused on the supervision of compliance with telecoms regulations and the creation of a National Telecommunications Commission in charge of the regulatory role;
- the creation of an impartial conflict solution system;
- improvement of the licensing system in order to make a better use of spectrum;
- adjustment of regulation for a better use of telecommunications networks and to encourage competition;
- stimulation of interconnection between conventional networks and IP networks;
- implementation of number portability for fixed and mobile telephony; and
- redefining the Telecoms Development Fund in order to bridge the digital gap.

The implementation of these measures will require several regulatory initiatives.

Finally, the discussion of an important bill that regulates the installation of telecommunications antennae which will probably regulate mandatory co-location of telecoms infrastructure, is pending in the National Congress, and it should be enacted during 2010.

**32 Next-generation networks**

How are next-generation networks (NGN) regulated?

There are no specific regulations on NGN. 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 due to the 'technological neutrality principle' that inspires Chilean telecoms legislation, pursuant to which services are provided without regard to the technology used for their provision.

**33 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?

There is no legal basis in the GTL for requiring structural separation between an operator's network and service activities. The structural separation concept has therefore not yet been introduced into our legislation.

Please note, however, that during 2007 there was a notice of proposed rulemaking issued by Subtel in connection with the change of the telecoms licence granting system that contemplated that entities interested in supplying only network services would not require any licence (except when they require to use a portion of the radio-electric spectrum). Such entities, however, would have to previously register themselves on the network operator and service provider registry.

**Media regulation****34 Ownership restrictions**

Is the ownership or control of broadcasters restricted? May foreign investors participate in broadcasting activities in your jurisdiction?

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.

Without prejudice to the foregoing, in case of RBTS concessions requested or acquired by entities controlled 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 evidences that the country of origin of the foreign investors grants to Chilean citizens the same rights that they will enjoy in Chile.

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

**35 Cross-ownership**

Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

No. An OTBS concession, however, may not be granted to an entity that already is or controls a VHF concessionaire in the same service area. Likewise, Chilean authorities might restrict cross-ownership of media companies if, according to antitrust law, it impairs, restricts or eliminates free competition within the relevant market. Any such instances will be analysed on a case-by-case basis by the Competition Court.

**36 Licensing requirements**

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

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

For information regarding the licensing timescale of these kinds of concessions and permits, see question 14. In connection with the fees payable for the use of the radio electric spectrum, see question 13.

**37 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?

There are no current regulations. The NTC, however, has the authority to determine, in a general manner, that a percentage of up to 40 per cent of the transmissions of OTBS channels must be comprised of domestic productions.

**38 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 dispersed in several legal provisions:

- advertising transmitted through OTBS or CATV must comply with the 'proper performance' requirements contained in the NTCL;

- the NTC has established that any kind of advertising of prohibited drugs is forbidden;
- the Tobacco Law materially restricts tobacco advertising. This law provides that no advertising or promotion of tobacco products shall be made in publications addressed to people under 18 years old. On television, such advertising or promotion shall be done only in hours in which the NTC has authorised programmes qualified for people older than 18 years old. Likewise, tobacco advertising in Chilean communications media by means of international signals or web sites ending with ‘.cl’ termination (which is the ending of domain names granted in Chile) is prohibited;
- the Consumers Protection Law prohibits false or misleading advertising;
- the Unfair Competition Law sanctions any conduct against the good faith that using illegitimate means is aimed at deviating customers ‘from any market agent’. In such regard, among other types of conduct, the Unfair Competition Law specifically classifies as unfair competition:
  - any false or incorrect statement or information about any product, service, activity, trademark or logo of any third party, when such false or incorrect statement or information is capable of damaging the market reputation of such third party;
  - any conduct that makes use of another party’s reputation and leads to confusion about own and third parties’ products and services; and
  - any comparative advertising that is not based in verifiable and true data;
- the Press Law grants the right of clarification and rectification, through which any person or entity offended or unfairly alluded to (for example, through advertising) in the media (including OTBS and RBTS concessionaires) has the right to transmit or publish (as the case may be) a clarification or rectification in the same media in which the offence or unfair allusion was made, paying only for the cost of the material to be transmitted or published; and
- according to the Law of Votes and Scrutiny, electoral propaganda may only be transmitted during the period running from 30 to three days before the relevant election or referendum.

As a result of the above-mentioned lack of an organic regulation in connection with advertising, the companies engaged in this business and the RBTS and OTBS providers created the Consejo Nacional de Autoregulación Publicitaria (National Council for the Advertising Autoregulation) (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 which are used in the commercial activity sector;
- no advertisement must be exhibited in a way that diminishes public confidence in publicity;
- every advertisement activity must involve real and true competition among several products and services, that, through adequate information, will allow the public to make a free and informed choice; and
- as an activity oriented mainly towards public welfare, advertisers and agencies must adapt their actions to the economic, cultural, social and educational reality that the community has at the moment in which the relevant products and services are offered.

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

Online advertising has also not been organically regulated. It is subject, however, to most of the rules mentioned above for non-online advertising.

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### 39 Must-carry obligations

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

OTBS concessionaires have to transmit at least one cultural programme per week. Such cultural programmes must have a duration of at least one hour and must be broadcast between 6pm and 11pm.

Likewise, the president of the republic or other high-ranking public officials may request a *cadena nacional de emisoras* (national broadcasting chain). Under a *cadena nacional de emisoras*, all OTBS and RBTS concessionaires are requested by the government to transmit, at the same time, certain information or announcements deemed highly relevant to the Chilean people.

The relevant broadcasters must assume the cost of the cultural programme and any *cadena nacional de emisoras*.

Likewise, as mentioned above, any person or entity offended or unfairly mentioned 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 mention was made, paying only for the cost of the material to be transmitted or published.

Finally, the Law of Votes and Scrutiny regulates the propaganda that the different candidates or positions may broadcast during electoral periods. According to such law, during the period running from 30 to three days before the relevant election or referendum, OTBS concessionaires shall freely assign 30 minutes every day to electoral propaganda related to the election of the president of the republic, the election of congress members or national referendums. But if the presidential election is held jointly with the election of congress members, OTBS concessionaires shall assign 40 minutes every day to electoral propaganda.

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### 40 Changes to the broadcasting laws

Are there any changes planned to the broadcasting laws? In particular, do the regulations relating to traditional broadcast activities also apply to broadcasting to mobile devices or are there specific rules for those services?

As already mentioned, traditional broadcast activities and mobile devices are subject from a technical standpoint to the GTL. In this sense, Subtel’s authority extends only to technical aspects of the traditional broadcast permits and mobile concessions and do not comprise the ability to control the content of their transmissions. From a content standpoint, the NTC is the entity in charge of, among other functions, supervising that the content transmitted by television broadcasters complies with the proper performance, but the NTC does not have the authority to regulate the content transmitted by mobile devices. There are no specific regulations applicable to mobile devices in this regard.

The main changes expected for the broadcasting laws are those required for the implementation of digital television services. For more information on this issue, please see question 42.

**41 Regulation of online content**

How is the delivery of content online regulated?

There is no specific regulation in connection with the delivery of content online. This kind of content, however, is subject to the general regulations applicable in this regard (constitutional rights, criminal law, private law, etc). For more information see question 21.

**42 Digital switchover**

When is the switchover from analogue to digital broadcasting required? 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 MPEG 4. This standard was created in Japan and modified in Brazil. The telecoms authorities have predicted that the digital switchover should not happen before 2017.

Radio frequencies that are freed up from this switchover shall be distributed by means of a public bidding process. It is expected, however, that current OTBS concessionaires will keep all of their frequencies.

**Regulatory agencies****43 Regulatory agencies**

Which body or bodies regulate the communications sector? Is the telecoms regulator separate from the broadcasting regulator?

The main regulatory bodies are the following:

**Ministry of Transportation and Telecommunication (MTT)**

The application, control and interpretation of the provisions of the GTL and other regulations on telecoms correspond to the MTT, which, for such purposes, acts through Subtel. The MTT, acting through Subtel, ensures that all telecoms services, systems and premises that generate any kind of electromagnetic waves are installed, operated and exploited in such a manner that they do not cause damage or harm to persons or their properties or interfere with other telecoms services in Chile or abroad. Finally, the MTT, acting through Subtel, controls and supervises the operations of PTS and protects subscribers' rights in connection with the rendering of such services.

**Undersecretary of telecommunications (Subtel)**

Subtel is a public entity subordinated to the MTT. It is the telecommunications arm of the MTT. Some of the main duties of Subtel are as follows:

- proposing national policies regarding telecoms;
- coordinating telecoms within the country;
- supervising compliance with the laws, regulations, rules and internal provisions, treaties and international agreements regarding telecoms, as well as the telecoms policies approved by the government;
- issuing general and mandatory resolutions, instructions and technical regulations required by the telecoms sector; and
- managing the radio-electric spectrum.

Through the exercise of its powers, Subtel plays an active role in its field. It is involved in all stages of provision of telecoms services, from the granting of the required concessions, permits or licences, their control and development, to their termination or expiration. It is also deeply concerned with ruling on and supervising the technical aspects of telecoms business in Chile.

**The National Television Council (NTC)**

The NTC is the main television broadcasting regulator. It has 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 OTBS concessions. From the perspective of the broadcasting content, the NTC is mainly concerned with the supervision of the proper performance of television services, whether OTBS or CATV.

**44 Establishment of regulatory agencies**

How is each regulator established and to what extent is it independent of network operators, service providers and government?

The MTT, Subtel and the NTC are regulators established by law. Both the MTT and Subtel are directly subordinated to the president of the republic and, therefore, to the government. In contrast, the NTC is an autonomous non-centralised public entity, with its own legal status; its relationship with the president of the republic is established through the general government secretary.

All such regulatory agencies are completely independent from Chilean telecoms and broadcasting operators.

**45 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. Most such procedures allow the possibility to appeal such decisions before the ordinary courts of justice.

**46 Interception and data protection**

Do any special rules require operators to assist government in certain conditions to intercept telecommunications messages? Explain the interaction between interception and data protection and privacy laws.

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

Additionally, the Personal Data Protection Law establishes, as a general principle, that save for certain specific exceptions (eg, data available from sources accessible to the public, etc), it is mandatory to obtain the prior written consent of the data subject to gather and process personal data. If not, the breaching party may be forced to indemnify the data subject for any damages caused by such breach.

However, under certain statutes (eg, the Criminal Procedural Code, Anti-Terrorist Law and 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 Ministerio Público, 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.

In this regard, in September 2005 the MTT issued a regulation establishing the procedures that should be adopted in advance by the telecommunications service providers in the event that they are judicially required to intercept and record communications of its users.

**47 Data retention and disclosure obligations**

What are the obligations for operators and service providers to retain customer data? What are the corresponding disclosure obligations? Will they be compensated for their efforts?

The GTL does not expressly order the telecommunications operators and service providers to retain the data of its customers and, therefore, they will not be compensated for doing so.

The Criminal Procedure Code, however, provides that telecoms operators shall keep an updated record of their IP address ranges and the IP numbers of the connections made by their customers for a period of six months.

For more information on this matter, please see question 46.

**48 Unsolicited communications**

Does the legislation prohibit unsolicited communications? Are there exceptions to the prohibition?

Unsolicited communications sent by e-mail are allowed in Chile only for advertising purposes. This kind of communication shall comply with several conditions, such as the obligation of the sender to clearly specify its advertising purposes and the sender's identity. Additionally, unsolicited advertising communications shall contain a valid e-mail address to which the receiver may demand the suspension of the e-mails. Once such suspension is requested, the sender of the unsolicited communications shall immediately stop them.

**Competition and merger control****49 Competition and telecoms and broadcasting regulation**

What is the scope of the general competition authority and the sectoral regulators in the telecoms and broadcasting sectors? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

Under Chilean law, the Competition Court shall resolve all issues relating to competition matters (including any issue relating to competition within the telecoms or broadcasting markets). As such, telecoms and broadcasting authorities may only act as technical advisers to the Competition Court. Therefore, there should not be any conflict between the telecoms and competition authorities.

In order to ensure the consistent application of competition and telecoms and broadcasting sector-specific regulations, the Competition Court is legally empowered to request the complete or partial amendment or abrogation of any telecoms or broadcasting law or regulation, provided that such laws or regulations restrict or impair free competition and that the Competition Court considers that they damage the public interest.

**Update and trends**

One of the main highlights of the telecoms sector during 2009 was the outcome of the public bid that assigned new concessions for 3G mobile telephony. As a result, two new players, Nextel (who was awarded 60MHz) and VTR (who obtained 30MHz), secured a place in the mobile telephony market joining the current operators Entel, Movistar and Claro. Major practical effects of this new scenario will be seen during 2010, in which some related pending regulatory issues should be resolved (such as the bill that regulates the installation of antennas and mandatory co-location; and the implementation of number portability), new commercial strategies should be effected by the companies involved and vast investments for the deployment of new mobile telephony networks should take place.

**50 Competition law in the telecoms and broadcasting sectors**

Are anti-competitive practices in these sectors controlled by regulation or general competition law? Which regulator controls these practices?

Resolutions in connection with anti-competitive practices (including any practice affecting the telecoms and broadcasting sectors) are the responsibility of the Competition Court pursuant to general antitrust law. In addition, the GTL expressly forbids discriminatory conduct among telecoms operators (especially in relation to interconnection and information matters). In such cases, the MTT is empowered to control and supervise such discriminatory behaviour.

**51 Jurisdictional thresholds for review**

What are the jurisdictional thresholds and substantive tests for regulatory or competition law review of telecoms sector mergers, acquisitions and joint ventures? Do these differ for transactions in the broadcasting sector?

In general, there are no merger, joint venture or acquisition pre-approval requirements. Likewise, there is no legal requirement to notify the Competition Court of these matters, whether before or after such transactions (notwithstanding the requirement of obtaining Subtel's prior approval for any concession transfer that could be implicit in a merger).

However, any act or agreement related to a change in the property of media operated under concessions or permits granted by the state (ie, OTBS, CATV and RBTS stations) shall be previously approved by the Competition Court. If the Competition Court does not approve or reject the change of property within 30 days from the corresponding filing, it shall be understood that the Competition Court has no objection to it.

Notwithstanding that, as a general rule, there is no pre-merger control in Chile, parties interested in a potential merger, joint venture or acquisition may voluntarily concur before the Competition Court

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and request the opinion of the court on whether the intended merger, joint venture or acquisition is against free competition. In this regard, there have been two recent cases of voluntary pre-merger inquiries:

- the merger between Metrópolis Intercom SA and VTR SA (the two leading CATV providers in Chile); and
- the acquisition by Telefónica Móviles SA of all the assets of Bell-south Corporation located in Chile.

In both cases the mergers were approved by the Competition Court, but subject to compliance with certain conditions.

Additionally, the Competition Court may at any time investigate proposed transactions in order to ascertain whether they impair, restrict or eliminate free competition within the relevant market. These conclusions are applicable to transactions in both the telecoms and broadcasting sectors.

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**52 Merger control authorities**

Which regulatory or competition authorities are responsible for the review of mergers, acquisitions and joint ventures in the telecoms and broadcasting sectors?

Please see question 50.

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**53 Procedure and timescale**

What are the procedures and associated timescales for review and approval of telecoms and broadcasting mergers, acquisitions and joint ventures?

Please see questions 50 and 51.

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