



MEXICO'S NEW TELECOMMUNICATIONS LEGAL FRAMEWORK

On December 2, 2012, Mexican president Enrique Peña Nieto entered into the Pact for Mexico ("*Pacto por México*") with the major political parties. The Pact calls, among others, for an amendment to the telecommunications legal framework. Thus, the President submitted to the Congress an important Constitutional amendment in order to redraft the telecommunications legal framework (the "Amendment") and the antitrust legislation. On April 29, the initiative was approved by the congress and now will require the approval by the majority of the State Legislations and its publication by the President to become effective.

Note that the amendment grants to the telecommunications legal framework a constitutional hierarchy, which represents a major change to and substantial empowerment of the institutions that are created by it.

Following is a summary of the most relevant changes related to Mexico's telecommunications framework.

INDUSTRY LIBERALIZATION

Foreign participation of up to 100 percent will be allowed in the telecommunications and satellite communication services and up to 49 percent in radio and television broadcasting services, in those cases where the investor's home country has reciprocity with Mexico that permits Mexican investment in those services.

NEW INDEPENDENT REGULATOR

A new autonomous constitutional agency called *Instituto Federal de Telecomunicaciones* ("Ifetel") will be created and will consist of seven members. The Ifetel will (i) establish the national and regional frequencies for telecommunications, broadcasting, and radio that could be used through concessions; (ii) issue regulations and grant concessions for the telecommunications, broadcasting, and radio industries; (iii) approve any transfers of concessions; and (iv) review the monopolistic issues in the industry with authority to order disinvestments.

Specialized courts to review the decisions of the Ifetel will also be created provided that no injunction to suspend the Ifetel decisions while they are being reviewed will be granted, except when such decisions relate to assets divestments.

DOMINANT AGENT

The Ifetel will have the authority, within 180 calendar days from the appointment of all its commissioners, to:

1. Rule in the telecommunications, broadcasting, and radio industries if there are dominant economic agents that exceed 50 percent of the national market share, calculated by users, subscribers, audience, installed capacity, or usage, of such network.
2. Issue accounting, structural, and functional segregation; asymmetric regulations of tariffs; and essential asset detachments or sales, in order to avoid harm to competition and consumer abuse.
3. Implement local loop unbundling obligations and access to the local loop of the dominant economic agents in telephony, pay TV, and fixed internet.
4. Publish the bidding rules in order to initiate the auction of frequencies that will allow the creation of two new nationwide broadcasting television networks, including one modeled on the UK's BBC or America's Public Broadcasting Services.

MUST OFFER AND MUST CARRY

Once the Ifetel commissioners have been appointed, holders of concessions authorized to broadcast over the TV frequencies will have to license, on a nondiscriminatory basis, free TV signals to pay TV concession holders. Holders of pay TV signals must carry and make free of charge the TV signals broadcast in their region. Direct-to-home pay TV service concession holders must carry over the TV signals broadcast in at least 50 percent of the Mexican territory.

The "must offer and must carry" principles will not be applicable to an economic agent that has market power or has been declared a dominant agent. The must offer and must carry obligations will no longer be applicable when the Ifetel considers that the market is distributed in equal terms among the telecommunications, television broadcasters, and radio agents.

LAWYER CONTACT

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