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## The challenges of the new telecommunications and broadcasting law in Mexico

The new President of Mexico Peña Nieto started work on 1 December 2012. The following day, the three main political parties executed the so-called “Pact for Mexico”, which contained several commitments including the reform of the telecommunications and broadcasting sectors.



On 11 June 2013, an historic constitutional reform in telecommunications and broadcasting was published after a fast-track process of just three months. The main purpose of the reform was to enhance competition in the telecommunications and broadcasting markets and to provide for the publication of a new convergent law on or before 9 December 2013. However, the political negotiations took longer than expected and the new Federal Telecommunications and Broadcasting Law (the “Law”) was enacted on 14 July 2014 and came into effect on 13 August 2014.

The Law repealed the Federal Telecommunications Law (1995) and the Federal Law of Radio and Television (1960) and introduced a new regulatory framework based on the principles and guidelines of the constitutional reform. We will highlight some of the most important features of the constitutional reform and the Law in this article.

The Federal Institute of Telecommunications (the “Institute”) was created as a constitutional entity with new powers (including in economic competition matters) and institutional design, incorporating specific rules on transparency and contact with the regulated industry.

Telecommunications and broadcasting services are considered as human rights and as public services. In resolving the implementation of the must offer and must carry obligations also introduced by the reform, the Institute evoked the status of such services as human rights.

There is a new authorisation regime (excluding spectrum or orbital resources) called “unique concession” that makes the provision of all services technically feasible. A unique concession can only be granted to Mexican individuals or entities, however there is no imitation with respect to foreign investment for telecommunications services and up to 49% in broadcasting services (subject to reciprocity from the country of the ultimate investor).

Spectrum and orbital concessions are granted through a public bid. The financial amount of the bid is not the sole criterion for success. Concessionaires are allowed to lease frequency bands under certain requirements. As part of the constitutional reform, the Institute is conducting two bidding procedures in order to award: (i) two new open television channels with national coverage, and (ii) the 113.0° West and 116.8° West slots and their associated bands for the provision of fixed satellite services.

Resellers of telecommunications services require an authorisation granted by the Institute. It is expected that this will be used to boost the MVNO market in Mexico.

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The Law contains a provision that public telecommunications networks with government ownership will be considered as shared networks for wholesale services only. There are two main projects under this scheme that shall be launched in the near future as public-private partnerships by the Federal Government: (i) extension of the fiber optic backbone network of the Federal Electricity Commission ("CFE"), and (ii) the installation of a wholesale network in the 700 MHz band.

The Law sets forth a new set of rights in favour of telecommunications and broadcasting users (e.g. to consult their mobile credit balance free of charge<sup>[1]</sup>, free election and non-discrimination in the access of Internet services, and distinction between advertising and programming content), including specific rights for disabled users (e.g. service centers, internet pages, and customer lines will have accessibility functions and subtitle services and dubbing of Spanish and Mexican sign language for people with hearing problems).

The Law includes different obligations in security and justice matters, such as the obligation to provide to law enforcement, in real time, a geographic location of mobile devices and to store, register and provide specific information relating to communications made from any line. Such obligations have been subject to criticisms and have been already challenged.

The Law contains two main provisions that trigger asymmetrical regulation: (i) preponderance, and (ii) dominance. The first is a new concept created by the constitutional reform and it applies to companies that hold a market share of more than 50% in the telecommunications or broadcasting sectors. The second refers to companies with substantial market power in any of the telecommunications and broadcasting markets under the Federal Competition Economic Law. On 6 March 2014, the Institute declared the following agents as "preponderant" and imposed different measures on them: (i) Telcel and Telmex in the telecommunications sector, and (ii) Televisa in the broadcasting sector. In addition, according to the Law, the Institute initiated on 11 September 2014 a process to determine the existence of dominance in both sectors, including the pay television market.

The Law contains a new set of rules to limit the cross ownership of telecommunications and broadcasting licensees and other restrictions in the acquisition of spectrum for broadcasting services, in the event that in certain market or coverage areas there is no access or limited access to diverse information.

Finally, the administrative decisions of the Institute can now be appealed only through a constitutional trial (amparo indirecto) and there is no injunction. Such trials will be held before the new specialised judges and courts in broadcasting, telecommunications and economic competition matters, that were incorporated as part of the constitutional reform and are expected to bring more certainty in these highly litigated areas.

Some of the changes introduced by the constitutional reform and the Law follow the recommendations of the OECD. One major step is for the Institute to act independently and according to the Law in order to give certainty to the market and to start producing effects that benefit consumers. In general terms, the Institute has achieved the aims set out in the constitutional reform and some of them have produced some important results, such as América Móvil's intention to sell part of its business in order to cease being a preponderant operator and therefore no longer subject to regulation.<sup>[2]</sup> Another example is that must offer and must carry are a reality in Mexico. However, additional rules shall be issued by the Institute to properly implement the constitutional reform and the Law.

The foregoing context will level the playing field and stimulate greater investment. European and North American investment groups have already shown interest in the Mexican market.<sup>[3]</sup>

On the other hand, the specialised judges and courts will also play an important role in duly resolving disputes in accordance with the new regulatory framework and they need to prove that they have the expertise and knowledge in doing so.

The Federal Government also needs to carry out several actions to implement large projects such as the deployment of the CFE Telecom fiber network, the 700 MHz wholesale network, a universal coverage program and the transition to Digital Terrestrial Television before the end of 2015.

The application of the constitutional reform and the Law is in its early stages and we need to wait and see the performance of all actors involved in the industry (private and public). Only time will tell if Mexico finally improves its rankings within the OECD countries, but it is in a much better position than it was before the reform.

With thanks to Mónica Sarraide.

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1 According to the Institute, at the end of the 1Q of 2014, 84.7% of mobile users in Mexico are prepaid: <http://www.ift.org.mx/iftweb/wp-content/uploads/2014/06/COMUNICADO-ITEL-1T2014.pdf>

2 America Móvil press release of July 8, 2014:  
<http://www.americamovil.com/amx/en/cm/news/2014/08072014.pdf>

3 Telecommunications Reform in Mexico: Regulation, Market Structure and Social Coverage, p. 21, Casanueva and Bacilio, Universidad Iberoamericana, Mexico City.

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