



Competition Policy in Telecommunications

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Competition Regulation

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Outline

- **Background**
- **The regulator**
- **The telecommunications law**
- **The competition law**
 - **Proposed changes**
 - **Observations from the authority in charge**
- **The ENTEL, CTC, Telefonica Case**
- **Conclusions**



Background

- **The Electric Law governed the industry and required only a license:**
 - In theory not exclusive
 - In practice exclusive per region
- **CTC became the largest operator through acquisitions**
 - Rate regulation was necessary
- **The government took over the company in 1971**
- **The government set up ENTEL to provide long distance services**



Liberalization Process

- **Plans for liberalization started in mid-1970s**
- **Privatization process took place between 1982-1991**
 - **Smaller companies**
 - **Shares on the stock market**
 - **Sale**



The Regulator

- **Creation of SUBTEL 1977 under the Ministry of Transport and Telecommunications**

Functions:

- ✓ **Primarily Technical**
- ✓ **Developing and enforcing technical standards**
- ✓ **Overseeing the operation of the telecommunications network**
- ✓ **Grant licenses**



Regulation of the Industry

- **Telecommunications Law of 1982**
- **Segments related to competition:**
 - **Art. 8: Concession holders are not allowed to engaged in activities that imply discrimination or alteration of a healthy competitive environment**
 - **Art. 12 It is possible to have more than one concession in the same geographic area**
 - **Art. 24 Operators need to allow the multicarrier system to allow consumers to choose the operator they want for their national and international calls**
 - ✓ **Providers of Intermediary services**



Regulation of the Industry

Art. 24 The telephone operator cannot discriminate on quality, extension, time limits, value and price of the services provided related to the multicarrier system

The telephone operator will need to provide all the other operators equal conditions with respect to economic, commercial, technical and information aspects necessary for the multicarrier system

These tariffs will be determined by the Ministry

Operators are now allowed to disclose third party information except what is necessary for telephone directories

The incumbent is required to provide information about subscribers, users, and traffic that used the multicarrier service.



Regulation of the Industry

- **Art. 25 All carriers are obliged to allow interconnection**
 - **Termination points are established by SUBTEL**
- **Art. 26 All operators will have equal access to international satellites and cables**
- **Art. 29 Tariffs are can be freely established between operators unless the Resolution Commission determines that the market is not sufficiently competitive**



Competition Law

- **Law Decree 211 of 1973**
- **Art. 2 Activities that limit competition:**
 - **The establishment of quotas, reduction or stoppage of production**
 - **Transport related activities**
 - **Cartels**
 - **Determination of prices on the basis of agreements or by forcing prices to third parties.**
 - **Limitations in the ability of workers to get organized**



Competition Law

- **Art. 3 Solutions to competition abuses:**
 - **Dissolution of the company**
- **Art. 4 The state is not allow to grant monopolies**
- **Art. 6 Organisms in charge of investigating, correcting and suppressing activities that limit competition:**
 - **Regional Preventive Commissions**
 - **Central Preventive Commission**
 - **Resolution Commission**
 - **National Economic Prosecutor**



Preventive Commissions

- **Art. 8 Engage in consultations about activities or contracts that can violate this law**
- **Make a decision about the findings**
- **Guarantee, within their power, a competitive environment**
- **Request investigations about violations**
- **Request collaboration from other state agencies, companies**
- **Dictate preventive measures:**
 - ✓ **Suspend up to 15 days agreements on quotas**
 - ✓ **Dictate price ceilings**
- **National issues are sent to the Central Commission**



Resolution Commission

- **Inform the National Economic Prosecutor of violations to competition and investigate such violations and pronounce its decision with any of the following resolutions:**
 - **Modify or end contracts**
 - **Order the dissolution of companies**
 - **Declare temporary suspensions on the work of people responsible for violations**
 - **Apply fines**
 - **Request that the National Economic Prosecutor begin penal procedures.**



Resolution Commission

- **Dictated instructions to the companies that violated the competition law**
- **Request changes in the law and regulations that may affect competition**
- **Be informed of the challenges to the decisions made by the preventive commissions**



National Economic Prosecutor

- **Art. 27 Conduct investigation about violations**
- **Request, with the authorization of the Resolution Commission, that the suspected party is not notified of the investigation**
- **Represent the collective interest before the Resolution Commission and tribunals**
- **Argue in favor or against the Resolution Commission before the Supreme Court**
- **Request that other commissions implement preventive measures**



National Economic Prosecutor

- **Supervise compliance**
- **Write reports**
- **Request collaboration of persons, state agencies and companies**
- **Request information from persons, state agencies, and companies about the case**
- **Request information from private citizens about the case**
- **Exercise penal action**



Process

- **The National Economic Prosecutor as well as Preventive Commission begin investigation as soon as they receive a complaint**
- **Coordinate investigations with the General Office of the Investigation Police**
- **Make a decision**
- **Propose preventive measures**
- **A penal action can be proposed but is not automatic and is independent of the preventive mandates**



Current Proposed Changes

- **Resolution Commission to be replaced by a Competition Tribunal**
 - **Greater independence**
 - **Greater administrative separation from the National Economic Prosecutor**
- **Elimination of all the preventive commissions**
- **Cleared definition of violations**
- **Eliminate penal accusations for competition violations**



Some Observations

- **The privatization process did not make provisions to adjust and strengthen state institutions to guarantee competition**
- **The court cases have created serious financial difficulties for some companies**
- **It is not clear which actions will lead to a penal prosecution**
- **There is no clear process to allow a company to defend itself**
- **The law itself does not have any provisions regarding mergers and acquisitions**



Case: ENTEL, CTC and Telefonica

ENTEL

- 1986-1987 sale of ENTEL with a 20% maximum ownership share per investor
- Telefonica bought 20% and planned to buy 10% more from Corfo
- Banco Santander bought 10%

CTC

- Entrepreneur Alan Bond buys a 30% stake in CTC
- Stake increased to 53% because another investor withholds
 - ✓ Less dependence on ENTEL by investing in microwave transmission facilities
- Bond was asked to reduce its stake to 48%



ENTEL, CTC and Telefonica

TELEFONICA

- Telefonica is pursuing a Latin America strategy with interests in Argentina, Mexico, Costa Rica among others.
- 1990: bought controlling stake in CTC
- It already has 20% stake in ENTEL



ENTEL, CTC and Telefonica

CENTRAL PREVENTIVE COMMISSION

- **It requests that Telefonica divest its interest in ENTEL**
 - It recognizes the natural monopoly nature of the industry
 - It is afraid that CTC would engage in discriminatory activities against other operators
- **SUBTEL**
 - The then Chief of SUBTEL did not mind the combination because he believed it would avoid duplication
- **Analysts believe the market is too small**



ENTEL, CTC and Telefonica

- **Telefonica appeals to the Resolution Commission**
- **Expected to be resolved in favor of Telefonica by presidential decree**



ENTEL, CTC and Telefonica

● Decision

- **1992: the Resolution Commission requested that Telefonica dispose its equity interests within 18 months**
- **Telefonica had already submitted 6 appeals to the Supreme Court, of which all were rejected**
- **1993: Supreme Court gave Telefonica 18 months to divest itself from equity interests in ENTEL or CTC**



Conclusion

- **While in the law it is not quite clear what the responsibilities of each agency are, in practice there is greater clarity and definition of roles**
- **The competition authorities can rule against the interests of the regulator**
- **The telecommunications regulator has little participation although it may be beneficial to have greater input by it**