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LATIN AMERICAN COMPETITION FORUM

-- Session IV: Competition Issues in Telecommunications --

Contribution from the Dominican Republic

9-10 September 2009, Santiago, Chile

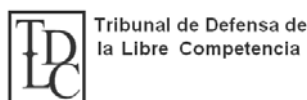
*The attached document from the Dominican Republic is circulated to the Latin American Competition Forum FOR DISCUSSION under session IV of its forthcoming meeting to be held in Chile on 9-10 September 2009.*

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**LATIN AMERICAN COMPETITION FORUM  
- 9-10 September 2009, Santiago, Chile -**

**Session IV: Competition Problems in the Telecommunications Sector**

**Contribution from the Dominican Republic  
Magdalena Gil de Jarp, Director of Planning and Development**

**Background**

1. Prior to 1930, the telephone service in the Dominican Republic was provided as a public utility. Thereafter and until 1992, a single firm provided the service under a legal monopoly — the Dominican Telephone Company (Compañía Dominicana de Teléfonos (CODETEL)), which had been created in 1930 as a subsidiary of the Anglo Canadian Telephone Company.

2. In 1992 the domestically-owned Tricom entered the market (three-channel communications; voice, data and video), thereby inaugurating and paving the way for free competition. Following its liberalization, telecoms have become one of the most dynamic sectors in the Dominican economy, allowing for the existence today of several firms with licences to operate the telecommunications service, including four companies, both domestic and foreign, which compete for most of the market. The investments made by these firms have given the Dominican Republic one of the most advanced telecom infrastructures in Latin America.

3. These firms currently offer the following services:

- Local fixed-line and wireless telephony
- National and international long-distance telephony
- Data
- Internet
- Video

- Pay-TV
- Radio communications (small and medium-sized enterprises)

4. Selected indicators shown below reflect the behaviour of the sector over the last five years:

**Indicators of telecommunications access per year, 2003-2008**

<b>Indicator</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Total tele-density <sup>1</sup>	33.5%	37.8%	49.0%	58.8%	67.7%	85.3%
Fixed line tele-density <sup>1</sup>	10.2%	9.9%	9.7%	9.6%	9.6%	10.3%
Mobile line tele-density <sup>1</sup>	23.4%	27.9%	39.3%	49.2%	58.1%	75.0%
Internet penetration <sup>2</sup>	8.2%	9.2%	11.9%	15.4%	17.7%	22.6%

Note: Data updated as of June 2008.

(1): Tele-density measures the proportion of telephone lines per 100 inhabitants. Population figure estimated by the National Statistics Office.

(2): Internet penetration measures the proportion of Internet accounts per 100 inhabitants. Figures corrected as of August 2009, based on information supplied by INDOTEL.

Source: Dominican Telecommunications Institute (INDOTEL)

National Statistics Office, Population estimates and projections 1950-2050, Dominican Republic

### **Regulatory framework**

5. Law No.153.98, promulgated on 27 May 1998, together with its implementing regulations, form the sector's legal, regulatory and normative framework. Implementing regulations currently in force for Law 153-08 cover the following:

- Concessions and subscriptions and special records and permits to provide telecom services in the Dominican Republic.
- Cable broadcasting services to provide resale services.
- General regulation on telephone services of general use concerning the range of charges and costs.
- Television broadcasting for collection of the Telecommunications Development Levy (CDT)
- The settlement of disputes between users and providers
- AM and FM radio broadcasting services
- Free and fair competition
- General interconnection for public service networks

### **Objective of the law**

6. To regulate the installation, maintenance and operation of networks; the provision of services and supply of telecommunications equipment throughout national territory.

7. In addition, specific objectives of public and social interest include:

- Reaffirming the universal service principle by:
  - i. Guaranteeing access to a minimum and effective telephone service in low-income rural and urban areas, at affordable prices under free-market conditions.
  - ii. Satisfying the demand for public telecom services under conditions of free competition, ensuring the continuity, generality, equality and neutrality of such services.
  - iii. Ensuring free access to public telecoms networks and services under transparent and non-discriminatory conditions by providers and users of telecommunications services, generators and receivers of information, and the providers and users of information services.
- Promotion of the provision of telecom services with quality and price characteristics that contribute to the development of production and service activities under internationally competitive conditions.
- Promotion of participation in the market for public telecom services by suppliers with capacity to develop fair and effective competition that is sustainable through time, and improves telecoms supply in terms of price, service quality and technological innovation
- To guarantee efficient administration and use of the public domain of the electromagnetic spectrum

### **Regulatory body**

8. This law created the Dominican Telecommunications Institute (INDOTEL) as sector regulator, with the following extremely clear and specific objectives:

- Promote telecoms development by implementing the universal service principle defined in the law.
- Guarantee the existence of sustainable, fair and effective competition.
- Regulate the country's electromagnetic spectrum in all domains.
- Defend and uphold the rights of customers, users and providers of such services, by issuing relevant regulations, enforcing the obligations corresponding to the various parties, and, as the case may be, punishing those who fail to fulfil them, pursuant to the provisions contained in the law and its regulations.

### **Application of the right to competition**

9. Law 153-98 enshrines the right to free competition, which is upheld through the law itself and its regulations. Throughout its text, the law proclaims the defence of free and fair competition, based on the specific objectives of this legislation and its regulatory body, as well as in some of its other provisions, including:

- Article 92, which sets out criteria governing the actions of the regulatory body. This article provides that: "When issuing regulations governing the functioning and development of

telecommunications markets, the regulator shall abide by the rule of minimum regulation and maximum market functioning, and shall take steps to ensure that the effects of its decisions are equivalent to fair, effective and sustainable competition wherever this does not exist."

- Article 105 defines any practice that restricts competition as a "very serious offence".
- Article 118 of the Law ratifies the Fourth Protocol to the General Agreement on Trade in Services (GATS) relating to the Basic Telecommunications Negotiations in the World Trade Organization (WTO); and this document was attached to the Dominican Republic's offer on telecommunications together with acceptance of the reference document on competitive safeguards.

10. The foregoing provisions of the law stem from the fundamental right to free enterprise, trade and industry, proclaimed in Article 8.12 of the Constitution of the Republic.

11. These laws contain key principles for ensuring free and fair competition in the sector, such as: non-discrimination, mandatory interconnection, cost-based pricing and the prohibition of anticompetitive cross-subsidies, among others.

#### **Restrictions on upholding the right to free competition**

12. A restriction on free competition is contained in Article 8.12 of the Constitution of the Republic, which establishes that: "Monopolies may only be established on behalf of the State or state institutions. Any such monopolies will be created and organized under the law". This prohibition applies to all economic agents.

13. Both the foregoing constitutional provision and the rules contained in the General Telecommunications Law are frequently evoked in the application and interpretation of laws governing the telecoms sector.

14. There is an ongoing debate on the practical boundaries the right of the administered party, and the power of the regulator to make decisions on free contracting.

15. Nonetheless, the regulatory body's case history contains previous decisions in favour of free and fair competition, protected by the Rationality Principle contained in Article 92 of the Law.

16. A case presented before the regulatory body is described below.

In the case in question, bank x asked INDOTEL to deny the concession of Dominican electromagnetic spectrum frequencies to company z, to enable the bank to obtain payment of amounts owed to it by company z.

17. In relation to the case, the INDOTEL Board of Directors issued Resolution No. 25-04 of 2 March 2004, which states as follows:

"Pursuant to the Rationality Principle that underlies Article 92.1 of Law No. 153-98, with regard to minimum intervention by the regulator and maximum market functioning, it is unjustifiable to deny the concession in question merely on the grounds of imminent danger of a loan default that might be caused to a bank."

18. Nonetheless, a number of restrictive practices may arise as a result of regulatory vacuums in certain subsectors such as small and medium-sized radio-broadcasting enterprises, which claim not to receive equal treatment:

- It is hard for them to obtain frequency or channel allocations to expand their services.
- They are not eligible for telephone interconnection

19. In the television subsector they claim:

- UHF channels do not compete with cable TV for international and national VHF band channels on equal terms, because they have to pay a fee, while their competitors do not. There are opposing opinions, however.

### **Latest developments**

17. In 2006, INDOTEL issued Resolution No. 156-06 approving the General Regulation on Number Portability, and in 30 September of 2009, number portability came into effect in the Dominican Republic. This definitively established free competition in the communications sector, since users no longer face any restrictions on contracting services from the company that offers the best quality at the lowest cost.

### **Prospects**

21. Although the telecoms market in the Dominican Republic is in a situation of open competition, major steps still remain to be taken, such as:

- Amendment of the interconnection regulation to cover capacity interconnection and the interaction of new-generation networks.
- Amendment of the concessions regulation to include convergence.

22. With regard to the effects of technological convergence on markets, for the purposes of antitrust analysis, the concept of convergence has not been explicitly considered either in the sector law, or in the General Law on Defence of Competition. Nonetheless, any cases arising would be dealt with under current regulations until the corresponding amendments are made.

23. With regard to interaction between the competition authority and the sector regulator, the law for the defence of competition is the General Law on the Protection of the Right to Competition and, as such, takes priority over sector laws, even though these remain in force.

24. In cases involving sector laws, plaintiffs will seek to uphold their rights under the procedures established in those laws. In the event of contradiction or doubt between the provisions of the sector law and those contained in the General Law on the Defence of Competition, the latter prevails.

25. Article 69 of Law 42-08 sets a deadline of no longer than two years from entry into force, for the National Commission for the Defence of Competition to convene sector regulators to review, propose and jointly issue competition regulations to govern the functioning of those markets.