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**LATIN AMERICAN COMPETITION FORUM**

**Session III: Triple/Quadruple Play in Telecoms**

**Contribution from Argentina**

**13-14 Septembre 2011, Bogotá (Colombia)**

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## LATIN AMERICAN COMPETITION FORUM

13-14 September 2011, Bogota (Colombia)

Session III: Triple/Quadruple Play in Telecoms

-- CONTRIBUTION FROM ARGENTINA \*--

### 1. Evolution of regulations on bundled services

1. This note reviews regulations relating to sectors that are currently technically able to provide “Triple Play” bundled services (Internet, telephony and subscription television) to the residential sector.
2. Even today these regulations deal separately with firms that originally provided closed-access television services, and telecommunications firms that have historically been suppliers of telephony services.
3. Reducing electromagnetic frequencies to the level of bytes made it possible to use various physical media to transmit voice, audio and/or video content indistinctly. Nonetheless, the different network architectures are not equally suited to the transmission of bundled services.
4. In purely technical terms, Argentina has three sectors whose trunk network structures *a priori* enable them to offer bundled services: telecommunications and subscription television networks and electricity grids.<sup>1</sup> As noted below, each of these has advantages and disadvantages when adapting to the bundled service environment.

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\* This note was prepared by Guillermo Pérez Vacchini (National Commission for the Defence of Competition).

<sup>1</sup> The electricity sector, which in principle has an advantage in the ubiquity of its networks, does not currently have household wiring with the capacity to provide telecom services. Nonetheless, there are examples of local electricity firms using the infrastructure (posts, cabling, etc.) to provide telecom services. This note will only consider the infrastructure of firms that originally provided telephony and subscription television services.

5. Another factor that needs to be analysed is the trend of regulatory entry barriers and the gradual move towards regulation that takes technological change into account.

6. The following paragraphs firstly address the evolution of regulations in the telecommunications and radio broadcasting sector. As will be seen, this allowed for a proliferation of firms of various sizes serving households through their own connections, in the both the telecommunications and cable television sectors.

7. The network structures in the sectors reviewed will then be analysed, to consider the advantages and disadvantages of each architecture for competing in the bundled services market.

## 2. Telecommunications regulation

8. The deregulation of the telecoms sector began with the privatisation of the State telecommunications company, under Decree 62 of 1990.

9. The national telecoms provider served the whole of Argentina, interconnecting with local telephony cooperatives licensed by the government to provide the basic service in areas of low population density (see Decree 3566/60).

10. As a result of privatisation, two firms were created and given 10-year monopolies to provide telecom services in two non-overlapping areas of the country. The telephony cooperatives gained the status of independent operators (*operadores independientes* – OIs), with a monopoly in their specific areas; and firms holding concessions to provide the basic phone service (*Servicio Básico Telefónico* – SBT) over the public telephony network (*Red Telefónica Pública* – RTPN) were created with the privatised firms.

11. After 10 years of monopoly provision, Decree 764/2000 opened the telecom sector up to competition, establishing a single licence regime (Annex I) and the National Interconnection Regulation (*Reglamento Nacional de Interconexión* – RNI) (Annex II).

12. The regulation does not fully liberalise the sector because the RNI sets conditions for the provision and interconnection to the public telephony network by independent operator providers within their historical supply areas, unless explicitly renounced, and also for the local fixed telephony service.<sup>2</sup>

13. Independent operators cover roughly 400 local areas throughout the country.

14. In 2000, new telecom enterprises started to enter the sector to provide various wholesale and retail telecom services targeting the corporate and residential sectors.

15. The current market structure was thus formed, in which firms forming the public telecoms network (former incumbent firms and independent operators) licensed to provide the basic phone service<sup>3</sup> (STB) coexist with new firms entering that network with licences to provide local telephony services (*Servicio Telefónico Local* – STL).

16. Apart from the exceptions noted above for areas served by independent operators and for the local fixed telephony service, the rest of the country enjoys competitive provision of the various telecom services (fixed, mobile and long-distance telephony; Internet; data transmission and various wholesale infrastructure services).

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<sup>2</sup> The long-distance service is provided competitively under the pre-subscription system, except for localities with less than 5,000 inhabitants where OIs provide the service.

<sup>3</sup> Chapter VIII of Decree 62/90 defines the “basic telephony service” as the “provision of fixed telecommunication links in the public telephony network, or connected to the network, and provision of the urban, interurban and international live voice service through such media.”

### 3. Regulation of radio broadcasting and cable television services

17. The Federal Audiovisual Communication Services Authority (AFSCA), the regulatory body that issues licences to supply cable television services, started operations following the recent passing of the Audiovisual Communications Service Law (No. 26.522) of 2009.

18. Law No. 19798 of 1972 was the last piece of legislation to view telecommunication as an undifferentiated demand for a service, defining it as “any transmission, emission, or reception of signs, signals, images, sounds, or any other information, by wire, radio-electricity, optical media, or some other electromagnetic system.” It also defined radio-communication as “all telecommunication transmitted through radio-electric waves”; and it defined the radio-broadcasting service as the “service of radio-communications through emissions intended for direct reception by the general public. This service includes emissions of sound, television, or any other type.”

19. In 1980, a year before subscription cable TV services started to appear in Argentina, the Radio Broadcasting Law (No. 22.285) was passed. This deregulated telecommunication and radio broadcasting services for the first time, the latter including subscription television, which was defined as a “complementary service” to radio broadcasting.

20. Some aspects of that law persist in the current regulation, either totally or partially.

21. In relation to the conditions and requirements for obtaining a licence, Article 45 of Law 22.285 establishes restrictions for firms that are not domestically owned.<sup>4</sup>

22. In 2005 significant amendments were made to Article 45,<sup>5</sup> including the following: (a) access is limited to journalism enterprises and/or foreign radio broadcasters; and (b) access is prohibited for any “legal entity providing a public utility.”<sup>6</sup>

23. Article 45.h also provides that “when the applicant for a licence to operate radio broadcasting services is a non-profit legal entity providing a public utility, the authority in question shall award the licence when there is no other licence-holder actually providing the service in question, either in the primary coverage area or in the service area in the case of services considered complementary to radio-broadcasting.”

24. As will be discussed below, the telecoms law does not impose any restriction on the granting of licences to firms providing radio broadcasting and/or complementary services.

25. Thus by 2005, firms holding radio broadcasting licences were in a position to acquire telecommunications licences to provide Internet and telephony services.

26. Nonetheless, telecom firms were not allowed to obtain a radio broadcasting licence if: (a) they were foreign firms, branches, or subsidiaries; or (b) they were public-utility licence holders,<sup>7</sup> or non-profit entities providing a public service in a supply area where another radio broadcaster already exists.

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<sup>4</sup> Its original version, Law 22.285 imposed restrictions on foreign journalist enterprises. The amendment to the Law made in 2005 also excludes foreign radio broadcasting firms (see Article 45.f.).

<sup>5</sup> See Law 26053/05.

<sup>6</sup> See Article 45.h. of Law 22.285.

<sup>7</sup> Ruling (*Dictamen*) 19475/GJNR/2003 of the Economic-Financial Area of the National Communications Commission, the implementation body for Decree 764/2000 on telecommunications defined the following

27. Law 26.522/09 on Audiovisual Communication Services, which replaced the Radio Broadcasting Law (No. 22.285/80), introduced amendments concerning the possibility of providing bundled services.

28. Although the law continues to prohibit public-utility licence holders from providing cable TV services (Article 25.d.)<sup>8</sup>, Article 30 makes an exception “in the case of non-profit entities, which can obtain licences to provide audiovisual communications services.”

29. This law provides that, in the event of opposition, the implementing authority of the Law for the Defence of Competition should issue a ruling specifying conditions for the provision of the service in question.<sup>9</sup>

30. In the cases mentioned, the supply of bundled services in local areas where the situation described prevails is thus subject to antitrust analysis.

#### **4. Effects of the regulation on market structure**

31. The regulations referred to above have had a huge effect on the evolution of the activity sectors in question.

32. Regulation in Argentina has historically tended to protect the cable operator sector from entry by firms that have historically been suppliers of telecom services, which has resulted in the widespread proliferation of local cable TV firms of various sizes, using the Hybrid Fibber Coax (HFC) infrastructure.

33. Argentina has the highest density of household cable TV of all Latin American countries, with roughly 50% of all homes individually connected,<sup>10</sup> providing services that include basic programming containing an average of 80 channels. Nearly all of those homes have another connection belonging to a telephony firm.

34. It is important to consider the relation between Argentina’s socioeconomic structure and the regulation. A high proportion of its population is urban,<sup>11</sup> and there are large concentrations in the main conurbations and provincial capitals.<sup>12</sup>

35. In those regions, incumbent enterprises and telecom firms provide services jointly, alongside large-scale cable operators.

36. In regions of low population density, in contrast, independent operators supply basic telephony service (STB) alongside smaller-scale cable operators.

as public services: “the public telephony service and the basic telephony service, participants in the national public telecommunications network.”

<sup>8</sup> The first considerations of that law issued by the national government did not contain any restriction for other public utility licence-holders, which had to be included as a result of negotiations with other sectors involved in the legislation.

<sup>9</sup> Article 30 of Law 26522: “in the event of opposition by another licence-holder in the same supply area, the implementing authorities shall request a ruling from the implementing authority of Law 25.156 specifying the conditions for service provision.”

<sup>10</sup> With absolute numbers of subscribers comparable with those of Mexico and Brazil, which have 2.5 and 3.5 times more inhabitants, respectively, than Argentina.

<sup>11</sup> According to the latest population census performed in 2010, 90% of its population lives in urban areas.

<sup>12</sup> Roughly 30% of the country’s total population lives in the federal capital and its suburbs (Greater Buenos Aires).

37. This distinction is important when considering the impact of the current regulation, because in more densely populated areas, incumbent telephony firms are currently prevented from providing broadcasting services, whereas in zones where independent operators (mainly local cooperatives) are most prevalent the recently passed Audiovisual Communications Service Law allows them to obtain a licence to provide cable TV services.<sup>13</sup>

38. Lastly, from the supply standpoint, and abstracting from existing regulatory barriers, the different network infrastructures have advantages and disadvantages that need to be evaluated when considering the competitive features of the main holders of licences to supply telecom services, on the one hand, and cable TV, on the other.

## **5. Cable operators sector**

39. In Argentina there are many cable TV firms of various sizes, established in different localities throughout the country.

40. A large proportion of these firms have converted their networks to provide the residential Internet service, requesting the respective telecoms licence from the regulatory body.

41. The cable operator network structure consists of distribution headends linked by fibre optic lines to optical hubs and nodes. From there, the signal is transmitted to individual homes along a coaxial cable.

42. Unlike the network structure used by telephony operators, which consists of a local exchange that feeds each home through an exclusive copper twisted pair, thus generating a star network structure, cable operators use a token ring structure, in which the cable passes successively through the different households in the zone (household pass-through system). For households requiring the service, the cable operator makes an individual connection from the street post to the house.

43. Unlike the telecoms structure, where the local loop reaches a maximum length of 5 km, the local access to cable suppliers can extend to several kilometres, which makes it necessary to amplify the signal to prevent it from degrading along the coaxial cable.

44. During the past decade, cable operators started to upgrade their network for the provision of bundled services, to be able to supply Internet services to the residential sector. This meant creating a two-way network, acquiring the respective exchanges, and changing the amplifiers located along the network to manage the upstream and downstream traffic.

45. Cable operators are supplying the residential Internet service on a competitive basis. Unlike the telecom firms' network, they have broadband access to homes, which has enabled them to react quickly and effectively to household demand for greater capacity.

46. The main weakness in terms of competition is that there are no trunk networks extending throughout the country, either for local cable suppliers or for entities providing their services in the various regions of the country, who have to request transport and wholesale Internet access from telecom firms that have dominant power in those markets.

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<sup>13</sup> Former incumbent firms have started to supply TV content (films, series, etc.) on a commercial basis. This service does not have any programming, or contents that could be encompassed within services traditionally considered as broadcasting. Nonetheless, the national government has recently launched a public terrestrial digital television (TDT) service, containing roughly 20 channels, including open-access television signals plus information, cultural, recreational, and children's channels.

47. Given the inexorable trend towards bundled markets, the CNDC has promoted the development of trunk cable operator networks, to enable them to compete with the telecom operators' infrastructure in a deregulated setting.<sup>14</sup>

48. Lastly, it should be noted that the investments that a cable operator with a two-way network structure already in place would need to make to also offer the telephony service, do not represent a significant entry barrier from the economic standpoint.

49. Nonetheless, few cable operators are currently providing the Triple Play service; and those that are have limited scope and coverage, which reflects slowness on the part of the regulatory body in allocating numbering.<sup>15</sup>

## 6. Telecoms sector

50. Since 2000, entities that have historically been suppliers of telephony services have developed an infrastructure of long-distance trunk networks and local fibre optic cables throughout the country, which is complemented with the widespread capillary network based on use of the public telecoms network (inherited from the former State enterprise ENTEL).

51. Technological development and the technological equipment of telecom firms currently make it possible to offer bundled voice, image and data services; and telecom firms are now supplying such services to the corporate sector on a widespread basis.

52. Nonetheless, the supply of the television service to the residential sector has entry barriers that historical players have not yet overcome: a regulatory barrier and an economic barrier.

53. The regulatory barrier was analysed above, namely the ineligibility of a foreign firm or public-utility licence holder to provide the audiovisual service. The economic barrier relates to last-mile conversion to provide services on a larger scale.

54. Telecom firms providing services to the corporate sector have overcome last-mile capacity constraints by laying fibre optic cable. This type of network cabling is justified by the demand for broadband in the corporate sector, but not in the residential sector for Internet + telephony services or even for Triple Play services.

55. Recently there have been developments in the software incorporated in the telecoms network, which make it possible at least to postpone the need to lay fibre-to-the-home (FTTH) cabling to supply the residential video and/or TV service, by using the copper twisted pair for household access.

56. The national regulation classifies firms providing the telephony service through the national public network as a public utility, thereby excluding new entrants to the sector, which can apply for a licence to provide subscription television services provided they are domestic enterprises.

57. In addition, the recent regulatory amendment to Law 26522 on the Audiovisual Communication Service, allows telephony co-operatives to apply for the licence, and allows telecom firms and cable operators to overlap in supplying bundled services within a wide range of local areas of low population density.

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<sup>14</sup> See CNDC Ruling No 637.

<sup>15</sup> The issuance of licences to provide cable services has been more active recently, following a long period in which no licences were issued.

**7. New regulatory openness: access to bundled services for non-profit telephony firms.**

58. The new regulations issued by the AFSCA allow for the entry of non-profit entities holding public-utility licences (a category that includes a large number of independent operators), provided the CNDC authorises their supply in local areas where the local cable company opposes this.

59. This situation raises a new problem, because, as discussed above, there are many local telephony cooperatives in Argentina providing the phone service as independent operators under monopoly conditions.

60. The current situation raises the possibility of gradually increasing openness towards bundling, starting with the smaller firms supplying such services in less populated areas

**8. Current market situation and conclusions**

61. The dispersion of regulations and the separation of sectors that could provide bundled services in different regulatory spheres are factors that restrict the spread of that market.

62. In recent rulings,<sup>16</sup> the CNDC has analysed the bundled market on a forward-looking basis, noting the significant degree of maturity present in the cable operator and telecom network infrastructure.

63. Although a number of cable operators are providing the three services, thus far there has been no case of two or more operators competing to provide bundled services in the same geographic market.

64. As noted above, most of the population, located in the main urban centres, can choose between two packages: subscription TV plus Internet offered by cable operators, or Internet plus telephony supplied by telecom firms.

65. Technological convergence has fostered competition between different operators and platforms in the residential Internet service, which has brought significant benefits for consumers.

66. The recent regulatory amendments allowing local telecoms operators to enter the bundled services market, subject to a prior ruling by the antitrust body to specify the conditions under which those services will be provided, gave rise to the first cases of competition between operators in the supply of bundled services within the same supply area — mainly localities of low population density.

67. Although substantial regulatory entry barriers remain for former telecom service incumbents to enter the market to supply bundled services, the current regulatory structure is a significant improvement in terms of sector openness, considering the gradualist strategy applied in various Latin American and European countries.

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<sup>16</sup> See CNDC ruling N° 835.