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LATIN AMERICAN COMPETITION FORUM

Session III: Triple/Quadruple Play in Telecoms

Contribution from Colombia

13-14 Septembre 2011, Bogotá (Colombia)

The attached document from Colombia is circulated FOR DISCUSSION under Session III of the Latin American Competition Forum at its forthcoming meeting to be held on 13-14 September 2011 (Colombia).

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-- CONTRIBUTION FROM COLOMBIA --

1. Product market definition

1. The main telecommunications operators implement various commercial strategies that offer different bundles of services (combination services, dual-play, triple-play, etc.) at different rates that are attractive to different market segments, as generally the cost of the bundle as a whole is lower than when the services are purchased separately.

2. Dual-play generally refers to a bundle consisting of fixed (landline) telephony and Internet, and triple-play to these two together with television in one subscription. In Colombia, it is common for local landline telephone operators to expand their product range with the Internet service, as is the case of Telecali, EPM (based in Medellín), Telebucaramanga, ETB and others, given that it is easy to adapt the technology for this.

3. In addition, there are service operators that offer subscriber television services which use both cable and satellite technology. For these operators, it has not been so easy to adapt the technology to offer services other than television.

4. Bundle offers depend on the technology available for bundling by suppliers, although the level of competition for bundles has been so great that many suppliers of dual-play services look for strategic alliances with satellite television suppliers so they can offer consumers a triple-play bundle.

5. The dual and triple-play markets can be considered to be particularly important markets for analysing competition, provided there is an overlap between the companies investigated in both restrictive commercial practices and in the control of integration in all these kinds of services being offered. The cases that have so far arisen have been dealt with separately, in accordance with the prevailing regulations. In this regard, tests such as the hypothetical monopolist test have not been used to study the bundling market and have rarely been used to study services separately. Concentration in these markets, as measured by the Herfindahl and Hirschman Index, is quite high (values over 1800) for municipal areas, where the

geographical markets for services are separately configured, and in the case of carrier services the threshold is at 7500¹, which denotes highly concentrated markets and, in many cases such as municipalities with under 50,000 inhabitants, markets that are monopolistic.

6. Although the rates for combination services in Colombia are not unified, due to the fact that they vary according to socio-economic level and the city, the triple-play bundle represents a significant saving in relation to separate rates for each service. Triple-play bundle offers in Colombia are assessed by consumers according to the Internet connection speed, which is still low in terms of download and upload speeds according to international standards. The advantage in acquiring a combination service is the approximate reduction in the cost of 20% to 40%, due to the lower costs of signal transmission over one single network and lower operating costs (involving just one invoice from the fully integrated supplier), giving higher aggregate values.

7. Consideration is being given to developing an additional element (i.e. quadruple-play bundling) in the long term. The fourth service included is mobile telephony, which has so far only been offered on the market by UNE EPM under the TIGO mobile brand. This has opened up the possibility of the TELMEX group, with the TIGO COMCEL mobile brand, and the TELEFONICA group, with the MOVISTAR brand, both of which participate in these services separately, entering the market.

2. Competitive effects of bundling

8. The Colombian competition authority has carried out different investigations in the telecommunications sectors regarding the ex-ante regulation of integrations and specific complaints concerning restrictive commercial practices, covering various services that offer bundles, with the relevant market being either the Internet, subscriber television, or fixed telephony.

9. Through these investigations, and under the guidance of the corresponding Regulatory Commissions², it has been shown that data for analysing the sector in Colombia are collected separately³. A study by the CRC (Relevant Markets Study), which was carried out in 2008, separates the markets for telephony (landline and mobile, and incoming and outgoing) and the Internet. Central to any analysis of competition in the sector in Colombia, the study serves as a guide for current regulations and is currently being updated⁴.

10. In this respect, the evaluation of anti-competitive effects has not been extensively studied in terms of bundles, whereas practices such as tying (tied products) and predatory pricing are liable to be investigated. Colombian legislation provides for the distinction between bundling and tying. There have been no complaints so far regarding the impossibility of obtaining one of the services separately. As far as predatory pricing is concerned, prices for dual and triple-play bundles are frequently lower than when bought separately. Even though the offers are similar and there are only a few competitors, no evidence has been brought to the attention of the competition authorities that any of them are offering a much lower price.

¹ CRC “Análisis de servicio portador con área de cubrimiento nacional” (Analysis of carrier services with national coverage), June 2010. p. 21

² The *Comisión de Regulación de Comunicaciones* (CRC, Communications Regulatory Commission) and the *Comisión Nacional de Televisión* (CNTV, National Television Commission).

³ Using a unified information system for the telecommunications sector (*Ministerio de Tecnologías de la Información*, MINTC/Ministry for Information Technologies).

⁴ Resolution 2058, 2009.

11. With the appearance of new competitors in the different telecommunications markets over the last ten years, the supply of bundles has clearly not been a factor limiting their entry into the market. The most well-known case in the sector was the entry into the market of TELMEX, a company whose strategy was the direct purchase of cable television service operators, which enabled it to move into the television market and then expand its range of products to the Internet (through the use of optical fibre technology) and fixed telephony services, with investments to expand its networks and update networks it had acquired.

12. This is an example of the barriers to entry within the sector itself whereas the limits on expansion are minimal. As a result, offers such as dual and triple-play bundles can be made at prices that are more affordable for consumers.

13. For its part, TELMEX promotes these bundles through acquired technology, in the same way that fixed telephony operators do to upgrade their networks and offer Internet services, which indicates substitutability from the supply point of view, with an equivalent outcome for the consumer. Operators that cannot make combined deals either establish alliances or end up falling behind, and local operators resort to joint ventures to offer one or various services that fill out a dual or triple-play offer. This is the case with ETB and other local operators who established alliances with DIRECT TV in order to offer a bundle, despite the fact that this is offered via satellite and customer service and maintenance are dealt with separately by the companies that provide these services.

14. The bundling of telecommunications services allows for various market efficiencies. There are economies of scale for producers who can extend their offer, together with economies of scope, with the technology enabling them to enter different markets. These are transferred to the consumer in the form of minimal transaction and switching costs. Both the CRC and this Agency recognise the competitive pressures that have forced down the cost of services over the last ten years, which at the same time has served in particular to aid market penetration of the Internet⁵. This is what happened as a result of the pressure exerted by mobile telephony on fixed telephony and, with the recognition of two different markets, both the use and cost of fixed telephony have decreased with the popularisation of mobile telephony.

15. The social well-being obtained through the supply of dual and triple-play can be seen exclusively in the cost. In terms of measurements, the cost per minute of telephony, together with the Kbps cost (kilobytes per second), has dropped. For consumers, broadband deals have become more common and the broadband standards were upgraded in 2010 from 512 Kbps to 1024 Kbps⁶.

3. Regulation

16. Law 1341:2009 laid down the obligations of government agencies, such as the CRC and the *Agencia Nacional del Espectro/ANE*, regarding the regulation and control of the telecommunications sector. The law recognises the process of convergence taking place in the sector, in which the appearance of new technologies enables different services to be bundled together and provided jointly. Pursuant to previous legislation, the sole antitrust authority was the SIC although today the CRC is the main competition authority with jurisdiction over these markets.

17. The abovementioned law established the general parameters that allow participants to enter the different markets, including the possibility of bundling services through the use of multi-service networks.

⁵ Resolution SIC No. 35073, 2010.

⁶ Resolution CRC 2352, February 2010.

18. The criteria for determining relevant markets in the telecommunications sector were established by the CRC, through its official capacity to protect and promote free competition in the provision of telecommunications services, in accordance with a sector-specific regulation laid down in Resolution 2058:2009. The Commission also identified certain relevant markets liable to ex-ante regulation, including: (i) outgoing mobile voice, (ii) landline-mobile call termination, (iii) wholesale market for landline-to-landline call termination in every municipality, (iv) wholesale market for mobile-to-landline call termination in every municipality, (v) wholesale market for mobile-to-mobile call termination throughout the country, (vi) wholesale market for international long distance call termination throughout the country.

19. A series of ex-ante obligations set in place through regulatory measures issued by the CRC serve to resolve competition problems that arise in the Internet and landline-mobile voice provider service markets. These measures are both general and specific.

20. The provision of telecommunications networks and services, which is a public service under State ownership, is enabled throughout the country, and services provided by operators are regulated pursuant to Decree 2870:2007 (*Título Habilitante Convergente*/THC or Convergence License).

21. Ex-ante regulation for triple-play services in Colombia entails consolidation of the regulatory authorities. Regulation has previously dealt with these services as different markets, with different corresponding bodies for the regulation and monitoring of service providers. Measures implemented by MINTIC, as the lead agency for State policy in the communications sector, have an impact in all sectors, while telecommunications are regulated by the CRC and the authority in the audio-visual services is the CNTV.

22. In 2007 a step forward was made by the CRC with regard to service bundling, which had not previously been regulated, through the setting up of a single system to protect telecommunications subscribers and users. Television was excluded, however.

23. The joint regulation of services is recommended in the cases of dual, triple and quadruple-play in order to protect consumers and to promote competition in the markets.

4. Vertical integration

24. Vertical integration is a reality in the telecommunications market given the technological facilities.

25. In Resolution 2850:2009, the CRC identifies the markets that are subject to ex-ante regulation. These are wholesale markets that comprise the carrier service. "The carrier service consists of a series of transmission elements that conforms a network at the national and international level, which provides the capability for the conveyance of signals"⁷. Other than this, there are currently no surrogate services and the sole carrier service is operated by four companies. In 2009, the main suppliers measured according to installed international capability were TELEFÓNICA, EPM, TELMEX, and INTERNEXA⁸. There is idle capacity of more than 50%, and these companies also operate in the retail markets.

26. The CRC has introduced regulatory measures in wholesale markets as they are fairly concentrated and use infrastructure that consists of what are considered to be essential facilities, as a result

⁷ Resolution SIC No. 35073:2010, p. 34.

⁸ "With Colombia Telecomunicaciones accounting for 38.5%, followed by Telmex Colombia with 27.4%, EPM Telecomunicaciones with 19.2% and Internexa 13.2%". CRC, *Informe Trimestral de Conectividad* (quarterly report on connectivity), December 2009. p. 13.

of which local loop unbundling (LLUB) is imposed. The criterion is that inefficiencies, together with anti-competitive practices, in wholesale markets (up-stream) will be replicated in retail markets (downstream) and therefore transferred to the consumer.

27. Along these lines, the CRC has studied the problem of vertical integration, especially with regard to Internet services, where there is a monopoly in the provision of carrier services in most towns and cities with less than 500,000 inhabitants, which suggests that the problems with competition are greater in smaller municipalities, basically due to “*the absence of a carrier route connecting the municipality to the data transport network (which could be solved, at high cost, by alternative wireless technologies)*”⁹. Measures taken in relation to this have focused on the monitoring every six months of retail agents in municipalities where problems with competition have been detected, the aim being to check that the use of essential facilities is not being restricted.

⁹ “*Análisis de service portador con área de cubrimiento nacional*” (Analysis of the national coverage carrier service), CRC, June 2010. p. 20.