



ALLIANCE PROMOTED BY GARRIGUES

ANTITRUST

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ARGENTINA

ARGENTINA'S ANTITRUST AGENCY CLEARS CABLE OPERATORS' MERGER

On December 7, 2007, Argentina's National Commission for the Defense of Competition ("NCDC") approved the merger of the country's two largest cable operators, Cablevision and Multicanal. In October 2006, Grupo Clarín S.A. ("GC"), the largest local media conglomerate, announced the acquisition of Cablevisión S.A. ("Cablevisión"), the largest cable company in Argentina. Since GC already controlled Multicanal S.A. ("Multicanal"), the second largest cable company, both cable operators became part of the same group. The operation involved a US\$ 1.1 billion share swap merger agreement with GC owning 60% and Fintech Advisory Inc. the remaining 40%. The merger also included the internet business Prima and the cable TV operator Teledigital of GC, and ISP's Fibertel and Ciudad Internet owned by Multicanal and Cablevision respectively. The merged company has a total of approximately 2.8 million subscribers, or 47% of the 6-million cable market, and about 620,000 broadband users.

To obtain the NCDC's final approval, GC committed itself to improving the quality of the services provided, although it is not clear how this will be measured. The group has publicly expressed its intention to invest US\$ 500 million through 2010

to lay 3,000 kilometers of fiber-optic cables to expand its broadband and cable services and roll out telephony, helping enlarge its sub base and boost revenue-per-user with the offering of more content and services. In addition, GC is committed to designing low-priced packages for lower income households and free packages for public offices.

The merger was finally approved in view of the imminent technological convergence known as triple play, where one company will be able to provide the two broadband services, high-speed Internet access and television, and the narrowband service, telephone, through a single broadband connection. The NCDC considered that the operation would reduce investment costs and thus enable the companies to make investments to provide telephone and broadband Internet access along with cable TV to a greater number of the Argentine population. Such benefits would therefore overcome the costs of there being a company with a clear dominant position in the pay-TV market for the foreseeable future. On the other hand, there were objections from several parties, including competitors, TV operators, content providers and independent parties on the grounds that the transaction strengthened GC's monopoly in the cable market without either divestitures or any price limits being ordered.



BRAZIL

There are no reportable events in this quarter.

CHILE

ENERGY JOINT VENTURE CLEARED AT ANTITRUST COURT

In October 2007, 16 months after the clearance process started, the Antitrust Court (*Tribunal de Defensa de la Libre Competencia*) gave its approval to HidroAysen, the energy joint venture between Endesa and Colbún S.A.. This joint venture involves financing, building and operating 5 electricity hydroelectric generation units in the Chilean Patagonia, in what is known as the Aysén Project (*Proyecto Aysén*), the largest energy development in Chilean history. HidroAysen's five generation units would generate 2355 MW in electricity. The generated energy should be transported to Santiago, 2000 km north of the location of the plants. The total investment involved in the approved operation exceeds US\$ 4500 million.

The decision of the Antitrust Court marks the first time that this court has assessed a joint venture using the full-function or partial-functions distinction. In this case, the Antitrust Court considered that the proposed joint venture did not eliminate a competitor, bearing in mind that the corporate governance of the joint venture would create common control of the new company. The court recognized that both Endesa and Colbún would remain competitive after signing the joint venture agreement and during

the operation of HidroAysen, without leaving the production and supply markets. Hence, no integration would occur between Endesa and Colbún. Therefore, the duty to prove the existence of efficiencies was lowered by the Antitrust Court.

Nevertheless, the Antitrust Court imposed several conditions due to the risk involved in the common operation of the generation units and the chance that Endesa and Colbún could have decisive influence in HidroAysen. The decision considered that there is a risk of coordination that could affect the Chilean energy market negatively. The conditions imposed by the court were as follows: (i) the design of the transmission line must be in a process similar to an "open season", due to environmental factors. This open process is only for the remaining capacity that is available; (ii) Endesa must sell its water rights in areas near the proposed dams, and desist in its requests of water rights in the area; (iii) the transfer price in the definitive power supply contracts between HidroAysen and Endesa and Colbún must contain a price that reflects the fact that HidroAysen is a cost center for Endesa and Colbún or that the price is the marginal cost of the electricity system, and (iv) HidroAysen must remain an open corporation, as long as Endesa and Colbún have shares in the joint venture.

COLOMBIA

(A) SUPERINTENDENCY OF INDUSTRY AND COMMERCE (SIC) REVOKES THE SANCTIONS IMPOSED ON COLOMBIA'S LARGEST CELL PHONE COMPANIES.

The SIC was forced to revoke the fines imposed on COMCEL and TELEFONICA after it failed to recognize the guarantees of due process during investigations concerning these companies for

allegedly engaging in anticompetitive practices, such as price-fixing agreements.

The SIC found that the ad-hoc Superintendent, who was in charge of verifying that the guarantees of due process had been fulfilled, had continued to investigate a case which had been closed in 2003, at which time COMCEL and



TELEFONICA had provided the information required by the national entity regarding tariffs for calls from fixed to cell phones in 2001, 2002 and 2003.

The decision was adopted by means of Resolution 40934 of 2007, revoking Resolution 23881 in which the SIC imposed fines of COP\$1,716,000,000 (approx. US\$ 858,000) on COMCEL, and COP\$572,000,000 (approx. US\$286,000) on TELEFONICA.

(B) SIC SANCTIONS CARREFOUR FOR FALSE ADVERTISEMENT IN THE AMOUNT OF APPROXIMATELY US\$21,500

The SIC recently decided that Carrefour, with its advertisement campaign "THE LOWEST PRICE", mislead consumers into thinking that the company sold all of its products at the lowest price in the market. After an investigation, the SIC found that the message of the French company's campaign was at odds with reality,

since it did not sell at the lowest price.

The SIC found, inter alia, that Carrefour did not sell at the lowest price every day, nor in every Carrefour store in Colombia. In addition, the lowest prices did not apply to perishable products. As a result, its products did not possess the attributes claimed in the campaign, which amounted to misleading advertising.

During the investigation Carrefour acknowledged that "it did not offer the lowest price every day and for all of its products", and that the aim of the campaign was to create the idea among consumers that in general Carrefour products were cheaper.

The fine imposed on Carrefour was COP\$43,300,000 (approx. US\$21,500) and the company was given ten (10) days to change the advertisement in order to stop infringing the law and damaging consumers' rights.

MEXICO

(A) MEXICO'S FEDERAL COMPETITION COMMISSION (COFECO) INVESTIGATES FIXED LINE AND WIRELESS TELEPHONY MARKET.

In November 2007, Cofeco started an investigation into the country's fixed-line telephone service to evaluate current conditions for effective competition in local, long-distance and wholesale telephone services. The market for fixed-line and wireless telephone services in Mexico is largely controlled by Telmex and America Movil, which accounts for a market share of about 85 per cent. Rivals to Telmex and America Movil have in the past accused the firm of charging high fees to connect to its network, thereby stifling competition. Telmex and America Movil has denied such allegations, saying that it had established its strong market position through good business practices.

(B) MEXICO'S LARGEST BROADCASTER, GRUPO TELEvisa, AUTHORIZED TO BUY TELECOMMUNICATIONS COMPANY BESTEL IN A DEAL WORTH OVER US\$325 MILLION.

In December 2007, Televisa's affiliate, Cablestar, was authorized by Cofeco to buy a controlling stake in Bestel for US\$256 million, and invest an additional US\$69 million.

Bestel has the largest transmission capacity in Mexico. It offers long-distance services via an 8,000 kilometer fiber-optic network that reaches as far as California. The deal adds telephone services to Televisa's existing broadband and cable-TV package. Triple-play services have been available to customers in Mexico City since mid-2007, after regulators relaxed a law barring cable companies from entering the telephone industry.



PERU

PERU'S ANTITRUST COMMISSION RULES AGAINST EXPLOITATIVE CONDUCT

Since 1995 *Consortio de Servicios de Transporte Turístico Machupicchu* ("CONSETTUR") has held an exclusive concession for the transport of passengers from the town of Aguas Calientes to the Inca citadel of Machu Picchu. On April 14, 2005, the *Asociación de Agencias de Turismo del Cuzco* ("AATC"), an association formed by certain travel agents in the district of Cuzco, filed an antitrust complaint with the Peruvian Antitrust Commission at INDECOPI against CONSETTUR. The basis of the complaint was CONSETTUR's alleged abuse of a dominant position through excessive pricing and exploitative discrimination in the transport of passengers from Aguas Calientes to Machu Picchu. AATC argued that CONSETTUR had increased the fees it charged for the transport of foreign adults from US\$ 9.00 to US\$ 12.00, which amounted to excessive pricing to the detriment of such consumers, as well as discriminatory treatment to foreigners.

The complaint filed by AATC was based on a case decided by the Antitrust Tribunal (INDECOPI's court of appeal) on June 4, 2004, which related to the complaint of what was deemed to be the charging of "excessive commissions" by certain private pension funds. The decision issued by the Antitrust Tribunal in this case (Resolution No. 0225-2004/TDC-INDECOPI) stated that the category of abuse of dominant position included both exclusionary and exploitative conducts. Furthermore, the Antitrust Tribunal concluded that excessive pricing was within the scope of Peruvian antitrust laws, and thus subject to the imposition of penalties and fines. The Antitrust

Tribunal was quick to emphasize that the fact that excessive pricing was within the scope of INDECOPI's competences did not mean that INDECOPI had the power to set prices in the market. Although the Antitrust Tribunal, based on the merits, decided not to impose a fine against the defendant in the above-mentioned case, the decision by INDECOPI's highest court was generally perceived by the market as advocating a greater degree of intervention by the Antitrust Tribunal.

Pursuant to Resolution No. 052-2007-INDECOPI/CLC (the "Decision") issued on September 14, 2007, and contrary to the views of the Antitrust Tribunal, the Antitrust Commission decided that "exploitative practices" (and excessive pricing) did not come within the scope of Peruvian antitrust law and, therefore, were not subject to penalties and fines. In this context, the Antitrust Commission established a mandatory precedent with certain interpretative guidelines to define its competences: (i) the objective of competition policies is the protection of the competitive process, (ii) the Antitrust Commission is precluded from determining which prices are "excessive" or "abusive", (iii) to be deemed contrary to Peruvian antitrust law, abuses of a dominant position require the exclusion of competitors from the market, and (iv) for such purposes, the following requirements shall be met: an agent must have a dominant position, which such agent has abused, causing an exclusion that actually or potentially affects competition. In addition, the agent must seek a certain benefit as a result of its conduct which would not be possible without the existence of a dominant position.



PORTUGAL

(A) PORTUGUESE ANTITRUST AUTHORITY PRESENTS RECOMMENDATION CONCERNING COMPETITION IN THE NOTARIES' PROFESSION

Last November the Portuguese antitrust authority submitted to the Portuguese Government a recommendation regarding notaries public which included certain measures and a timetable intended to introduce greater competition into this profession.

The recommendation is in line with the European Commission's guidelines on competition in professional services and the OECD's recommendations on the same subject.

The recommendation (a draft of which was presented in 2006) took into account recent legislative changes, such as the 2004 privatization of the notaries' activity and the developments under the SIMPLEX program (which simplified and de-formalized notary and registry acts), as well as the fact that certain services, which had been exclusively entrusted to notaries, are now open to other private and public professionals.

The Portuguese antitrust authority has identified a number of regulatory rules in the notaries' sector that restrict competition in an unnecessary and disproportionate manner among notaries and between notaries and other professionals also qualified to provide the same services. In addition, it has proposed a timetable for eliminating such restrictions.

In short, the Portuguese antitrust authority recommends:

- of notaries operating in Portugal, since it reduces the supply in the market, raises prices and impedes innovation;
- Notaries should be allowed to work throughout the national territory, irrespectively of the area where their registry office is placed;
- The elimination of the obligatory licensing of registry offices, which creates barriers to entry;
- The removal of the prohibition of notaries collaborating with each other and for each notary to be allowed to be responsible for more than one registry office, so as to enhance efficiency;
- For a change in the rules on advertising, allowing for some degree of advertising, similar to the situation with lawyers, in order to promote competition among notaries and keep consumers better informed of their options;
- The progressive elimination of price lists for acts of private notaries and the adoption of maximum prices for the services that remain within the exclusive scope of notaries (for as long as the *numerus clausus* remains in effect);
- The elimination of the Compensation Fund, through which notaries with limited revenue due to their geographic location are granted minimum financial support. The Competition Authority considers that the existence of such a fund is contrary to the liberalization envisaged for the market; and
- That the prices of registry acts that remain within notaries' exclusive competence are fixed
- The elimination of the *numerus clausus* principle, which imposes a limit on the number



on the basis of the cost incurred, in order to avoid subsidization.

According to the recommendation, the measures mentioned above shall be implemented in accordance with the following timetable:

- Phase 1 (4 years) – Adoption of most of the recommended measures;
- Phase 2 (1 year) – Complete elimination of the *numerus clausus* principle and obligatory licenses for registry offices; and
- Phase 3 – Elimination of price lists and the Compensation Fund, which shall complete the process of opening up the notaries' sector to competition.

(B) PORTUGUESE ANTITRUST AUTHORITY CLEARS MERGER BETWEEN TWO MAJOR FOOD RETAILERS

The Portuguese antitrust authority announced in December 2007 its decision to grant conditional approval to the merger between two large Portuguese food retailers, Sonae Distribuição and Carrefour Portugal.

By the end of the phase-one investigation, the antitrust authority concluded that the merger, taking into account the commitments given by Sonae Distribuição, was not liable to create or strengthen a dominant position capable of resulting in significant barriers to competition. Hence, the competition authority found that there was no need to initiate an in-depth analysis of the concentration and the merger was cleared directly.

Should the merger be implemented, Sonae Distribuição will acquire 12 Carrefour large supermarkets currently in operation, 13 projects for implementing Carrefour large supermarkets (which authorizations have already been granted by the competent authorities) and 8 gas stations near to Carrefour's large supermarkets.

On assessing the concentration, the Portuguese antitrust authority analyzed 16 local markets for food retail distribution, defining the relevant geographic markets based on the identification of the areas of influence of each Carrefour store that Sonae Distribuição intends to acquire.

According to the information provided by the antitrust authority itself, the markets were analyzed taking into consideration three types of food retail stores: large supermarkets, supermarkets and discount stores. Furthermore, the antitrust authority took account of the foreseeable changes in the markets in question, notably those resulting from authorizations for implementing new large supermarkets, supermarkets and discount stores that have already been granted.

The Portuguese antitrust authority also looked at the national market for the retail sale of fuel for road motor vehicles.

In order to ensure a satisfactory level of competition in certain food retail distribution markets onae Distribuição has made the following commitments:

- Not to increase the sales area for food retail, in certain places, during a given period of time;
- To eliminate certain sales areas for food retail;
- Not to apply for new licenses to implement food retail units in certain places, during a given period of time;
- To sell certain "Carrefour" and "Modelo" stores; and
- Not to make use of the license to implement a new "Carrefour" food retail store in a specific city in the North of Portugal (Viana do Castelo) in the event that it is not able to sell this license.



Sonae Distribuição and the antitrust authority also agreed that they would jointly appoint an entity which shall promote the sale of certain food retail stores and projects for food

retail stores, in the interest of the antitrust authority, if Sonae Distribuição is not able to carry out the divestments within a given period of time.

SPAIN

SAVINGS BANKS IN THE BASQUE COUNTRY AND NAVARRE FINED FOR OPERATING AS A CARTEL

In a recent decision, the National Antitrust Commission (the "CNC") considered the existence of a global cooperation agreement between savings banks in the Basque Country and Navarre to have been substantiated.

According to the CNC, the facts borne out in the case showed that there was a cartel operating, since the records of the Federation of Basque and Navarre Savings Banks contained the terms of a collusive agreement for the territorial carve-up of the market during the 1990-2005 period, when the savings banks refrained from competing in the territories of rival savings banks while they expanded heavily in other provinces. The Board ruled that this conduct restricted the

distribution of financial products and services on offer.

The investigation also uncovered the existence, over a fifteen-year period, of an unlawful alignment of competitive strategies based on agreements fixing prices and other commercial terms and conditions, as well as exchanges of information on operating costs and coordinated conduct to keep respective market shares stable and create barriers to entry by other competitors.

The Antitrust Law prohibits this type of conduct. In this particular case, the consequence was the elimination of competition between credit institutions, thereby limiting the opportunities for competitors outside the scheme to operate in the market and, in the last instance, harming consumers. For all of these reasons, the CNC fined the four savings banks involved €24 million in total.



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