

Unclassified

DAF/COMP/GF/WD(2013)48

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

19-Feb-2013

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Cancels & replaces the same document of 11 February 2013

Global Forum on Competition

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Mexico

-- Session II --

This contribution is submitted by Mexico under Session II of the Global Forum on Competition to be held on 28 February and 1 March 2013.

JT03334856

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/COMP/GF/WD(2013)48
Unclassified

English - Or. English

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Mexico --

1. What is the state of competition in the television broadcasting sector in your jurisdiction?

1. The Television market in Mexico has traditionally been highly concentrated and allows seldom foreign participation. Also, the television industry is characterized by a highly concentrated open TV with national scope and a pay TV network with several participants and incipient signs of emerging competition.

2. Until 1994, a quasi-monopoly in the open TV market existed under the control of Grupo Televisa (Televisa). However, with the privatization of the once publicly-owned telecommunications network, a national competitor, TV Azteca, emerged. Grupo Televisa and TV Azteca are the only two companies that provide open TV services with national coverage and they hold 70 and 30 percent market share respectively.¹ It is worth noting that 17 local stations with partial coverage exist and operate mainly in the northeast and center part of Mexico.²

3. Both companies, Grupo Televisa and TV Azteca, are vertically integrated, that is, their content production, storage and transmission processes are carried out by themselves. Vertical integration avoids double marginalization, but decreases the alternatives in the content production market (for both integrated and independent producers), raises entry barriers in the open TV market and diminishes channel choices for consumers.³ Competition restraints are reinforced by the fact that Televisa is the world leader in Spanish language program's production.

4. Furthermore, Grupo Televisa and TV Azteca together enjoyed high levels of concentration in infrastructure, audience and publicity. For example, in 2010, Grupo Televisa and TV Azteca accumulated 70 percent of the TV audience (reaching up to 99 percent of the open TV spectators). It is generally understood, that there is a clear relation between advertising investments and audience levels; therefore, the revenues derived from this concept show signs of market concentration. In this respect, Grupo Televisa and TV Azteca seized around 57 percent of the total investment in advertising (almost US\$ 3 billion dollars) including pay TV, internet and billboards, while open TV remained the preferred platform for advertising companies.⁴

¹ Eduardo Perez Motta, *Televisión digital terrestre: Oportunidades de Competencia*, Mayo 2011. Presentación disponible en <http://www.cfc.gob.mx/images/stories/Noticias/Presentaciones/2011/tvdigitalterrestre.pdf>.

² Local stations operate mainly in Monterrey, Torreón, Tampico, León and Mexico City. COFETEL, *Estudio sobre el mercado de servicios de televisión abierta en México*, p. 5. September 2011. <http://www.cft.gob.mx:8080/portal/wp-content/uploads/2012/06/Reporte-CIDE-CM-201112-publico.pdf>

³ *Ibid*, p. 1.

⁴ *Ibid*, p. 8.

5. On the contrary, pay TV has strengthened its position in the last decade. Pay TV has gained popularity within the Mexican audience and represents, up to date, 20 percent of the audience.⁵ While the former represents a significant progress, audience penetration levels, network infrastructure and prices for consumers must improve, so that pay TV becomes a relevant open TV competitor.

6. There is a greater number of participants In the pay TV market, some provide their services through satellite signal (Dish and Sky) and others through cable (Cablevisión, Cablemás, TVI and Megacable). It is worth noting that Televisa also participates in the pay TV market with its companies (Cablevisión, Cablemás, TVI and Sky) and represents up to 50 percent of the pay TV market.⁶

7. Advertising investments in the pay TV market grew 30 percent from 2005 to 2010, yet this represents just 6 percent of the total advertising investments.⁷ However, the upward trend in the past years indicates that the total share of pay TV advertising investments will continue to grow in the next years.

8. The growing demand for pay TV, coupled with a less restrictive regulation to operate in this market (as discussed below), allowed for the emergence of new competitors, fostering competition and diminishing the price of pay TV by 31.6 percent in the past four years.

9. There are significant differences in terms of competition between open and pay TV markets. The underlying circumstances to explain the different evolution in these two markets might be found in: (i) different regulatory frameworks and (ii) consumer preferences.

1.1 Regulatory Framework

10. The first and foremost entry barrier that open TV providers must overcome is to obtain radio electric spectrum (through a concession) to transmit a TV signal. Under the Federal Telecommunications Law (*Ley Federal de Telecomunicaciones*) to use a frequency band or to operate a telecommunications network, it is necessary to obtain a government concession through a public tender.⁸

11. The problem is that the last concession for open TV was granted to TV Azteca in 1994 and no open TV concession has been tendered every since. One of the top priorities for the incoming Mexican government is to tender available radio electric spectrum for the creation of two new open TV channels and to foster competition in this market.

12. As mentioned before, obtaining pay TV concessions is easier. As such, until May 7, 2012, the Communications and Transport Ministry had granted 1 thousand 518 pay TV concessions.⁹ The last application for satellite concession to provide pay TV services received approval from the Telecommunications Federal Commission (Cofetel for its acronym in Spanish) on November 7, 2012.¹⁰

⁵ See note 2, *Estudio sobre el mercado de servicios de televisión abierta en México*, page 37

⁶ See note 2, *Estudio sobre el mercado de servicios de televisión abierta en México*, page 6.

⁷ See note 2, *Estudio sobre el mercado de servicios de televisión abierta en México*, pages 8 and 35

⁸ Articles 10 to 14

⁹ Communications and Transport Ministry.
(http://dgpt.sct.gob.mx/fileadmin/concesiones/comunicaciones/servicios_television_restringida.pdf)

¹⁰ Cofetel press release, Pleno de Cofetel emite opiniones a la SCT respecto al otorgamiento de una concesión satelital y de asignaciones de frecuencias de uso oficial. November 7th 2012
(<http://www.cft.gob.mx:8080/portal/wp-content/uploads/2012/11/Comunicado-48-Pleno-de-la-Cofetel-emite-opiniones-a-SCT-nov-07-2012.pdf>)

13. It is worth mentioning that to guarantee competitive procedures to allocate spectrum, the CFC has been granted with powers to issue binding opinions on processes of structural separation of public assets and entities, as well as, on procedures for granting concessions and permits implemented by offices of the federal Government. In this regard, the CFC has the power to resolve on the competition conditions put forward in the statutory documents related to public tenders or auctions. Moreover, the CFC can authorize or reject the application of interested parties in these processes, to ensure a level playing field for applicants.¹¹

14. The second barrier is the legal restraints to foreign direct investment in the open TV sector. Under the Federal Radio and Television Law, radio and TV broadcasting companies must be owned by Mexicans (0 percent foreign participation). Foreigners are not allowed to participate under any investment forms (trusts, financial agreements, or other)¹², which entitles them with control rights. This restraint not only applies to content programming and production companies, but to transmitting companies. On the contrary, the pay TV regulatory framework allows for up to 49 percent of foreign ownership in companies.

15. Thus, current legislation allows for foreign participation in the pay TV market in Mexico but limits it considerably in the open TV market (foreign direct participation in the open TV market is only possible through neutral investment, that is, without acquiring the property rights).¹³

16. The CFC has advocated for several years to eliminate these restrictions and to allow foreign participation in the telecommunication markets (up to 100% ownership). Should the CFC's proposals be accepted, they would translate into greater financing options, lower capital costs and lower barriers to entry.¹⁴

17. The third barrier to entry is economic. A company wishing to compete against Televisa and TV Azteca must incur a substantial financial effort. According to the Telecommunications Regulator, the installation cost of an open TV station to reach 80 and 93 percent of the population is between 70 to 292 million dollars and 153 to 637 million dollars, respectively.¹⁵ Additionally, the production costs of a national channel can add several billion pesos a year. Finally, we should add the problems arising from the vertical integration of the two dominant firms and the high concentration of audience and advertising.

18. Another significant barrier relates to open TV contents. According to Mexican legislation a substantial percent of transmitted materials must be in Spanish, favor national content, reinforce national identity, promote creativity, local and national values among other.¹⁶ The CFC has also proposed to remove this requirement given the benefits granted to national producers in detriment of foreign producers and because it limits an efficient and competitive programming supply.

¹¹ Article 24, 57 paragraph XVI and III respectively and Article 59 of the FLEC

¹² Article 6 of the Law of Foreign Investment

¹³ To date, the different attempts made by foreign companies to participate in the open TV market have been unsuccessful because, among some other reasons, of the deterring behaviour by incumbents.

¹⁴ CFC Power Point Presentation.
(<http://www.cfc.gob.mx/images/stories/Noticias/Presentaciones/2011/aspectosdecompetenciaparalaleydetelcom.pdf>)

¹⁵ Cofetel (2011). Documento de Referencia a la Consulta Pública para la Licitación de Frecuencias para Televisión Abierta.
(http://www.cofetel.gob.mx/es_mx/Cofetel_2008/Documento_de_Referencia_CP_TvAbierta).

¹⁶ Articles 21-A and 73 *Ley Federal de Radio y Televisión* (Federal Radio and Television Act)

19. On the contrary, this requisite does not operate in pay TV services. The former along with the greater foreign investment margin in the sector, allows foreign producing and transmitting companies to enter in pay TV markets.

1.2 Consumer Preferences

20. The demand for pay TV has increased considerably in recent years, reaching growth rates of 50 percent between 2008 and 2010.¹⁷ Pay TV penetration in Mexican households reached 40 percent in 2012. While this figure seems low compared to 95 percent penetration of the open TV it represents an increase of 26 percent with respect to 2010.¹⁸

21. The underlying reasons for this increase are three: a) cultural factors, consumers seek greater content variety, b) economic factors, thanks to the entry of a "low cost" TV provider (Dish), the average price per subscription to pay TV services has dropped over 31 percent in the last three years allowing more households to enjoy this service, and c) regulatory factors, the CFC through several decisions and opinions has managed to strengthen competition in this sector.

22. In regard to the measures taken by the CFC, which will be discussed in the last part of this document, remedies imposed to the merger between Televisa and Televisión Internacional de Monterrey (TVI) must be highlighted. As part of the merger obligations it was agreed that Televisa, the acquirer, must offer open TV contents in non-discriminatory conditions to all pay TV companies which request so (must carry).¹⁹

23. Through these remedies the CFC assured that all pay TV suppliers could acquire and offer open TV channels at the same price. The former prevented discriminatory pricing by Televisa and favored price reductions in the contracting of Pay TV services.

1.3 Consequences

24. The lack of competition in the open TV markets adversely affects consumers since they are deprived of a plural content offer. Independent TV producers are affected since they must be vertically integrated with Televisa and TV Azteca in order to reach a wider audience. However, vertically integrated producers might also be subject to pressures from either Televisa or TV Azteca given the limited options for producers. Finally, advertisers are forced to pay high prices for each TV advertisement in Televisa and TV Azteca. Studies estimate an advertising rate 40 percent higher for the Mexican market in comparison to competitive market conditions.²⁰

25. As a result of this situation, we have in Mexico an open TV market with reduced competition that still holds 70 percent of the audience. However, pay TV market shows clear signs of growth under competitive market conditions with expectations to erode the open TV market quota, terms of audience and advertising.

¹⁷ See footnote 6

¹⁸ Latin American Multichannel Advertising Council. La TV de paga revoluciona los hábitos de consumo de medios de México. (<http://www.lamac.org/mexico/publicaciones/articulo/la-tv-de-paga-revoluciona-los-habitos-de-consumo-de-medios-en-mexico>)

¹⁹ CFC press release, Deberá Televisa cumplir condiciones de la CFC para comprar red de TV por cable. (<http://www.cfc.gob.mx/images/stories/Noticias/Comunicados2007/cfc02-2007.pdf>)

²⁰ See footnote 2, COFETEL, *Estudio sobre el mercado de servicios de televisión abierta en México*, page 47. These calculations are based on the EBITDAs available for different channels across the globe.

2. What do you consider to be the most significant current and future challenges for competition policy in television broadcasting?

26. In light of that explained above, it is easy to observe that one of the main challenges is to foster competition in the open TV market. Other challenges worth mentioning which Mexico will face in the coming years are: the migration from analogue to digital terrestrial television (DTT) and the design of the interconnection terms among television and telephone operators to ensure a competitive market.

27. These challenges are also part of a comprehensive telecommunications strategy implemented by the CFC for several years with the aim to increase competition²¹, household penetration and to lower prices.

28. One of the priorities in the political agenda of the incoming president of Mexico, Enrique Peña Nieto is to encourage competition in the open TV market. All political parties have decided to include this matter in the Mexico Pact as part of the necessary goals to achieve in the near future.²²

29. In particular, commitment number 43 of the Pact establishes that:

More national open TV channels will be tendered, implementing operation rules consistent with best international practices, such as the obligation of cable systems to include free radio broadcasted signals (must carry); also the obligation for open TV providers to offer their signal to operators in a non discriminatory fashion with competitive prices to pay TV operators (must offer) will be included; thus, limiting market concentration to foster competitive conditions in the radio and television markets.

30. The legal reforms necessary to carry out these tender will be presented on the first semester of 2013, and their implementation will begin on the second semester of the same year.

31. The radio electric spectrum that will be tendered will be enough to create two new channels with national coverage. Neither the rules nor the basis for the tender are defined, but the CFC is actively collaborating with other regulators and with the government to assure an efficient spectrum allocation and to avoid greater market concentration.²³

32. By tendering the spectrum it is expected that new competitors will enter the Open TV market. If so, advertising prices will be reduced, TV channels would be guaranteed access to more transmission platforms and consumers will enjoy a greater plurality of information and contents.

33. The second challenge is the transition to digital terrestrial television. This objective is also framed within CFC's strategy to foster competition on the telecommunication sector.

²¹ CFC power point presentation.
(<http://www.cfc.gob.mx/images/stories/Noticias/Presentaciones/2011/aspectosdecompetenciaparalaleydetelcom.pdf>)

²² Mexico Pact is a document that outlines the commitments agreed by all political parties for the next six years and is on the top priorities of the Federal Government.

²³ CFC Power Point presentation.
(<http://www.cfc.gob.mx/images/stories/Noticias/Presentaciones/2011/tvdigitalterrestre.pdf>)

34. According to the president of the telecommunications regulator, the transition to digital terrestrial television will cost around \$US1 billion dollars.²⁴ This investment will not only be necessary to offer a greater quality television, but also will help reduce entry barriers to the open TV market. Digital terrestrial television allows for the transmission of several signals through the same spectrum channel, which results in an increase in the use of spectrum and therefore an increase in the television signals supply.²⁵ In this sense, technological change can help reduce or even eliminate a natural entry barrier, limited radio electric spectrum. To heighten the efficiency of this measure a tender for open TV concessions must be carried out.

35. Through these actions it is expected that new competitors offering open and pay TV services will emerge as it happened in Spain, United Kingdom and France. Also, a greater TV supply would reduce the audience of traditional open TV suppliers in favor of new open and pay TV companies, which would imply greater competition in the advertising markets.²⁶

36. The third challenge would be to ensure technological convergence so that mobile operators can participate in the open and pay TV markets and vice versa.

37. In 2005 and 2006 the CFC issued two opinions with respect technological convergence and audiovisual contents. In these opinions the CFC stated the necessity to carry out regulatory reforms in the TV and mobile and fixed telephony markets to ensure a competitive environment for the transition. The aim of the proposed reforms is to advocate for the elimination of artificial barriers to entry and foster competition among interconnected fixed and mobile networks.

3. What has been your relevant experience in competition law enforcement relating to television and broadcasting?

38. To enforce effectively the Federal Competition Law (herein after FLEC or Competition Law), the Commission has grouped several procedures into six areas: mergers; monopolistic practices; opinions on the granting of concessions and permits; consultations; requests for reconsideration and appeals, and declarations on effective competition conditions.²⁷

39. These procedures have helped the CFC to strengthen competition in the telecommunication sector. The following section describes the recent CFC experience in the enforcement of Competition Law in the Television market.

3.1 Merger Assessments

40. On April 2011, the Televisa/Iusacell²⁸ merger was notified to the CFC. This operation involved the acquisition of 50 per cent of the market share of GSF Telecom Holdings²⁹, by Grupo Televisa, S.A.B (Grupo Televisa) and Corporativo Vasco de Quiroga.³⁰

²⁴ El Universal, Apagón analógico costará más de 13 mil mdp: Cofetel. 10 de enero de 2013. (<http://www.eluniversal.com.mx/finanzas/99856.html>)

²⁵ See note 2, p 12.

²⁶ Ibid.

²⁷ Article 24 of the FLEC

²⁸ File: CNT-031-2011 and RA-043-2011

²⁹ GSF Telecom Holdings holds shares in Grupo Televisa and a Grupo Salinas subsidiary.

³⁰ Corporativo Vasco de Quiroga is a Grupo Salinas subsidiary.

41. For its assessment, the CFC assessed the impact of three relevant markets: mobile telephony, open and pay TV.

42. In the mobile telephony market, the CFC considered that the operation would provide Iusacell with additional capital which would imply more vigorous competition in the mobile telephony market. On the contrary, for the open and pay TV markets, the CFC considered the operation anticompetitive since the merger could give both enterprises the incentives to coordinate their activities.

43. Therefore, the CFC plenum challenged the merger on January 2012. Grupo Televisa and Grupo Salinas submitted commitments to solve the competition problems identified by the CFC in both markets.

44. In regards to the open TV market, the parties involved committed to dissolve the merger in case a public tender for a third concession for a TV network were not carried out in the 24 months following the operation. Also the new company resulting from the merger must provide advertising space in a non-discriminatory basis and ensure the independence of Iusacell board.

45. As for pay TV market, the parties committed to a non-discriminatory content sale, open and restricted signals unbundling, open signal content unbundling and the restriction for Total Play, enterprise involved in the triple-play service, (telephone, pay TV and Internet) to be part of Grupo Televisa, with the purpose of avoiding Televisa participation in Total Play market share.

46. Failing to observe the conditions established by the CFC would imply dissolution of the merger. Besides, pursuant to Articles 35 paragraph VIII and XI of the FLEC the CFC may sanction the group by imposing a fine of 10 percent of its annual income. Thus the CFC decided to accept the merger on June 2012.

47. Some similar cases assessed by the CFC in the pay TV market are Televisa/TVI³¹, Televisa/Cablemas³², Mega Cable/Acotel³³ and DISH Mexico Holdings/ EchoStar Mexico Holdings³⁴.

48. The CFC was notified of the Televisa/TVI and Televisa/Cablemas mergers. The mergers were considered anticompetitive because Televisa would acquire control over necessary inputs for distribution and marketing of TV channels packages transmitted on pay TV. The Commission decision was against the approval of the merger. Taking the former into account, the parties presented similar conditions to those presented in the Televisa/Iusacell case (must offer, must carry, independent boards, signs unbundling).

49. Therefore the CFC approved the merger under the commitment to comply with those conditions. Some of these conditions have been met³⁵, but the CFC just imposed the maximum fine to Grupo Televisa for failing to ensure the independence of the parties' boards. Nevertheless the Commission decided not to revoke the clearance for the merger.

³¹ File: CNT-048-2006

³² File: CNT-018-2007

³³ File: CNT-084-2007

³⁴ File: CNT-084-2007

³⁵ File: RA-029-2006-I y RA-027-2007-III

3.2 *Cartels and horizontal agreements*

50. On February 2006 the CFC started an investigation involving Productora y Comercializadora de Televisión, S.A. de C.V. (PCTV, for its acronym in Spanish) shareholders for incurring in absolute monopolistic practices.³⁶ The one hundred seventy five shareholders of PCTV agreed to keep for themselves segments of the pay TV market. The CFC ordered the suspension of such practice and imposed a fine to the PCTV shareholders.

3.3 *Abuse of dominant position*

51. Simultaneously, the CFC started an investigation for relative monopolistic practices in the pay TV Network wholesale trading market. The CFC claimed that PCTV³⁷ had substantial power in the relevant market and refused to trade their signals with one of the cable television network operators in the state of Veracruz.

52. In this regard, in March 2009, PCTV presented a series of commitments including the adequacy of its statutes to facilitate membership to PCTV. The CFC considered these commitments to increase competition in the pay TV market. Therefore, the CFC accepted the conditions and imposed a minimum fine to PCTV.

53. Furthermore, on September 2007, Tele Cable Centro Occidente (TCCO for its acronym in Spanish), a pay TV supplier in different areas of the country, filed a complaint against Grupo Televisa for withholding the delivery of its TV signals for its transmission over pay TV.³⁸

54. In this case, the CFC claimed that Grupo Televisa had substantial power in the relevant market. To prove the former the CFC considered that Televisa's TV signals are essential inputs for pay TV operators willing to compete in the market. The CFC also found that Grupo Televisa repeatedly denied the use, distribution and dissemination of television signals to TCCO, and discriminated access to their television signals to favor its subsidiaries, in detriment of TCCO. In November 2009, CFC imposed a fine for almost \$US 4 million dollars.

3.4 *Vertical Restrictions*

55. In August 2006, Grupo de Telecomunicaciones Mexicanas (GTM) filed a complaint against Teléfonos de Mexico (Telmex) for alleged anticompetitive practices. In particular, Telmex stated that GTM tied the broadband internet service sale to the fixed local telephony service.³⁹

56. The CFC defined the relevant market as fixed-line accesses to broadband internet. It also acknowledged that technological evolution and the reduction of regulatory barriers have allowed telecommunications service providers to provide triple play services (pay TV, telephone and broadband) to counterbalance Telmex's commercial strategy.

57. The CFC also identified economic agents that increased their transmission capacity, improved their network coverage and successfully provided bundle services (packages like "Yoo" supplied by

³⁶ File: DE-001-2006

³⁷ PCTV is the main TV Network wholesale supplier for pay TV systems.

³⁸ File: DE-022-2007

³⁹ File: DE-033-2007

Cablemás). Some of these economic agents offered price and quality conditions similar or even better to those provided by Telmex.

58. Therefore, the CFC found that Telmex practice did not prevent other agents to reach their minimum efficient scale to stay in the market. Thus, the CFC decided to close the file.

3.5 Competition advocacy in the sector

59. The CFC is entitled to issue opinions on competition matters, regarding legislative bills, regulation, and administrative acts when the CFC considers that they may result in adverse effects to competition in a market. These opinions and general recommendations have been helpful in influencing the design of public policies and in ensuring that these incorporate competition principles, as well as, to encourage cooperation between the CFC, Cofetel and the Ministry of Communications and Transportation (SCT, for its acronym in Spanish).

60. In this regard, the CFC has adopted a permanent supervision of Congress bills and Executive's secondary regulation drafts, in order to analyze and identify projects that may introduce barriers to competition or jeopardize economic efficiency in markets.

61. For example, in February 2011, the CFC sent an opinion to Congress, SCT and Cofetel, which suggested a series of measures to foster competition in the telecommunications sector.⁴⁰ For the pay TV market, the CFC recommended the SCT and Cofetel the following:

- i. allow the main fixed telephony operator to supply pay TV service, once it is established that the interconnection supply is according to competitive terms.*
- ii. to carry out a public tender for the radio spectrum concession over the third open TV network, with CFC's participation in order to prevent anticompetitive circumstances.*

62. The CFC considered these recommendations relevant for allowing new competitors in the pay TV market. This would benefit 3.8 million homes in the country by enhancing competition through a third open TV network. It also considered the access to means of delivery of audiovisual content, as well as, rights to use audiovisual content as essential inputs for transmission media.

63. In November 2012, the Mexican Congress requested the opinion of the CFC on a draft reform to the Federal Radio and Television Law. The CFC considered that the initiative posed no risks to competition and that it would force pay TV service providers to broadcast open TV signals and also force open TV service providers to support the distribution of their signals.

64. Other examples of CFC contribution for TV markets are the opinion issued in November 2006, in which the CFC ruled in favor of developing a consistent and neutral regulatory framework for the audiovisual content sector. Also in October 2011, an opinion was issued to claim that the transition to digital terrestrial television in Mexico will allow a more efficient use of radio spectrum, a better quality signal, a greater content variety and a supply of complementary services to viewers.

⁴⁰ Resolution PRES-10-096-2011-033