

CLIENT UPDATE

TELECOMMUNICATIONS REFORM COMES INTO EFFECT

The Mexican President signed into law an amendment to the Mexican Federal Constitution (the “Constitution”), which came into effect on June 12, after being published in the Official Daily of the Federation on June 11.

The reform’s objectives include increasing competition in telecommunications, improving access to the same, increasing participation by foreign investors, reducing costs for consumers, promoting market transparency and strengthening powers of regulatory agencies, through which the amendments are expected to establish better prospects for Mexico’s economic growth.

The following are key provisions of the amendments to the Constitution:

- Pay TV carriers must carry without charge, open TV channels
Open TV companies must offer without discrimination and without charge, open TV channels to pay TV companies
- Foreign investment is permitted in up to 100% of telecommunications and satellite communications companies and up to 49% in radio companies
- A newly created regulator, the Federal Telecommunications Institute, shall publish basis for a bid to create two new TV companies with full country coverage
- The Federal Telecommunications Institute is empowered to determine which companies are dominant participants in radio and telecommunications
- The newly created regulator is empowered to breakdown the local network of the dominant participant in telephone, paid TV and internet
- The Federal Government shall build a new telecom services public network

“Must Carry” and “Must Offer”

The amendments to the Constitution impose new obligations, including the following:

1. “Must Carry”

The amendments to the Constitution provide that pay TV systems ‘must carry’ all local TV stations without charge.

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2. “Must Offer”

The amendments to the Constitution impose a corresponding obligation on broadcasters to grant pay TV operators nondiscriminatory access to their TV channels without charge.

Dominant participants are not entitled to demand access free of charges. Should a difference to determine applicable charges ensue, a newly created regulator, the Federal Communications Institute, is empowered to determine the applicable rates.

Increased Foreign Investment Participation

The amendments raise the ceilings of foreign investment participation so as to allow foreign investment in up to 100% of telecommunications and satellite communications companies and up to 49% in radio broadcasting companies, provided reciprocity with the home country of the respective investor exists in case of the latter.

New TV Networks with Full Country Coverage

The amendments provide that the Federal Telecommunications Institute, shall publish within 120 calendar days from its organization, basis for a bidding process to create two new TV companies with full country coverage.

Federal Telecommunications Institute

A new regulator with substantial autonomy, the Federal Telecommunications Institute (the “FTI”), is created. The FTI is empowered to regulate broadband content, telecommunications and radio. The FTI is vested with economic competition regulatory powers in telecommunications and radio.

The FTI is empowered to determine which companies are dominant participants in radio and telecommunications.

In essence, a dominant participant is a participant that has a participation of 50% or more measured as a percentage of (i) users, (ii) traffic in networks or (iii) installed capacity.

The new regulator is empowered to order the breakdown and segregation of the local network of the dominant participant in telephone, paid TV and internet, so that any licensed telecommunications user may access the public telecommunications network at any segment from its own network.

It may regulate tariffs asymmetrically and it may order divestment of assets. Such measures shall terminate at the time there is deemed to be conditions for an effective competition in the field.

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Limitation on Stay Effects of Legal Actions

The Mexican federal courts may exercise significant powers through the suit of amparo, which consists of a power to deny, on a case-by-case basis, the enforcement of actions taken by the legislative or the executive branch in violation of the Federal Constitution. The purpose of this type of suit is to protect (amparar) private persons whose individual Constitutional rights have been violated through laws or acts of governmental authorities. The high level of the federal courts and their generally consistent independence from the executive branch has enabled them to turn the amparo suit into a fairly effective shield to protect private individuals from laws and actions which violate their rights.

However, certain types of amparo suits have the effect of staying the consequences of the action taken by the governmental authority challenged under the same. Participants in the telecommunications industry have often resorted to a tactic consisting of the filing of successive amparo suits to delay and virtually impede the effectiveness of governmental actions in the telecommunications industry to the detriment of much needed openness and competition in the industry.

The amendments provide that participants challenging measures taken by the FTI in respect to dominant participants and remedial actions in respect to the same, will only be able to file indirect amparo suits, which do not have the effect of staying a governmental order, unless and until a final favorable court decision is rendered by the relevant court.

Please do not hesitate to contact us with any questions.

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