

Telecoms & Media 2019

Contributing editors
Alexander Brown and Peter Broadhurst



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

Published by

Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between March and May 2019. Be advised that this is a developing area.

© Law Business Research Ltd 2019

No photocopying without a CLA licence.

First published 2000

Twentieth edition

ISBN 978-1-83862-118-6

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Telecoms & Media 2019

Contributing editors

Alexander Brown and Peter Broadhurst

Simmons & Simmons LLP

Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Telecoms & Media*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Korea.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and Peter Broadhurst of Simmons & Simmons LLP, for their continued assistance with this volume.



London

May 2019

Reproduced with permission from Law Business Research Ltd

This article was first published in June 2019

For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	5	Italy	105
Alexander Brown and Peter Broadhurst Simmons & Simmons LLP		Edoardo Tedeschi and Margherita Gnech Simmons & Simmons LLP	
Net neutrality, privacy and VoIP: tension between US federal and state enforcers	6	Japan	113
John Nakahata, Kent Bressie, Adrienne Fowler and Stephanie Weiner Harris, Wiltshire & Grannis LLP		Chie Kasahara Atsumi & Sakai	
Brazil	9	Kenya	120
Maurício Vedovato and Daniela Maria Rosa Nascimento Huck Otranto Camargo		Brian Tororei KT Law Associates	
Chile	15	Korea	128
Alfonso Silva and Eduardo Martin Carey		Kwang Hyun Ryoo, Ji Yeon Park and Juho Yoon Bae, Kim & Lee LLC	
China	27	Malta	135
Jingyuan Shi Simmons & Simmons LLP		Andrew J Zammit and Annabel Hili GVZH Advocates	
Cyprus	35	Mexico	144
Kleopas Stylianou and Nikos Stavrou Tornaritis Law Firm		Julián J Garza C and Paulina Bracamontes B Nader, Hayaux & Goebel, SC	
Czech Republic	41	Nigeria	151
Martin Lukáš and Vladimír Petráček Weinhold Legal		Tamuno Atekebo, Otome Okolo and Chukwuyere E Izuogu Streamsowers & Köhn	
European Union	48	Portugal	160
Christophe Fichet, Christopher Götz, Martin Gramsch, Anne Baudequin and Felix Hänel Simmons & Simmons LLP		Gonçalo Machado Borges, Nuno Peres Alves and Mara Rupia Lopes Morais Leitão, Galvão Teles, Soares da Silva & Associados	
Greece	64	Russia	169
Dina Th Kouvelou and Nikos Th Nikolinakos Nikolinakos & Partners Law Firm		Anastasia Dergacheva, Ksenia Andreeva, Anastasia Kiseleva, Kseniya Lopatkina and Vasilisa Strizh Morgan, Lewis & Bockius LLP	
India	72	Serbia	177
Atul Dua and Anuradha Advaita Legal		Bogdan Ivanišević, Pablo Pérez Laya and Zorana Brujić BDK Advokati	
Indonesia	83	Singapore	185
Agus Ahadi Deradjat, Kevin Omar Sidharta and Mahiswara Timur Ali Budiardjo, Nugroho, Reksodiputro		Chong Kin Lim and Shawn Ting Drew & Napier LLC	
Ireland	94	Switzerland	200
Helen Kelly and Simon Shinkwin Matheson		Marcel Meinhardt, Astrid Waser and Damian Joho Lenz & Staehelin	

Taiwan 207

Robert C Lee
YangMing Partners

Thailand 213

John P Formichella, Naytiwut Jamallsawat and Artima Brikshasri
Blumenthal Richter & Sumet

United Arab Emirates 221

Raza Rizvi
Simmons & Simmons LLP

United Kingdom 227

Alexander Brown and Peter Broadhurst
Simmons & Simmons LLP

United States 240

Kent Bressie, Julie A Veach, Michael Nilsson, Colleen Sechrest,
Paul Caritj and Austin Bonner
Harris, Wiltshire & Grannis LLP

Mexico

Julián J Garza C and Paulina Bracamontes B
Nader, Hayaux & Goebel, SC

COMMUNICATIONS POLICY

Regulatory and institutional structure

- 1 | Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

On 14 July 2014, the new Federal Telecommunications and Broadcasting Law and the new Law for the Public Broadcasting System of the Mexican State were published in the Official Mexican Gazette.

The Federal Telecommunications and Broadcasting Law and the Law for the Public Broadcasting System of the Mexican State supersede the previously enacted Federal Telecommunications Law and the Federal Radio and Television Law. Also, any provisions in the Law on General Communications that conflict with those in the Federal Telecommunications and Broadcasting Law will no longer be in effect.

The issuance of the new telecommunications and broadcasting legal framework derives from the constitutional reform published in the Official Mexican Gazette on 11 June 2013. This reform created the Federal Telecommunications Institute as an autonomous public agency, independent in its decisions and function, with its own legal status and resources, for the purpose of regulating and promoting competition and efficient development of the telecommunications and broadcasting sectors.

The Institute is responsible for the regulation, promotion and supervision of the use, enjoyment and exploitation of the radio spectrum, orbital resources, satellite services, public telecommunication networks, and broadcasting and telecommunications services, and has the authority to regulate access to active and passive infrastructure, as well as to other essential resources related to such industries.

The Federal Telecommunications Institute, which supersedes the previous Federal Telecommunications Commission, is the authority in terms of antitrust matters in broadcasting and telecommunications sectors, for which it shall exercise the powers, set forth in the Mexican Constitution, the Federal Telecommunications and Broadcasting Law and the Federal Competition Law.

According to the Federal Telecommunications and Broadcasting Law, the Institute may issue, among others, administrative regulations, licences and authorisations on telecommunications and broadcasting matters and decide on their renewal, modification or revocation, as well as authorising assignments or change of control, title holding or operation of the business entities related to such licences and authorisations. The Ministry of Communications and Transportation shall issue non-binding technical opinions on the matters mentioned above.

The Mexican Constitution and the Foreign Investment Law set forth that direct foreign investment is allowed up to 100 per cent for telecommunications and satellite services, and up to 49 per cent for broadcasting services, subject to a standard of reciprocity.

Authorisation/licensing regime

- 2 | Describe the authorisation or licensing regime.

The Federal Telecommunications and Broadcasting Law sets forth the current licensing and authorisation regime, which consists of sole licence, licence to use, enjoy or exploit frequency bands of the radio spectrum, licence for the occupation and exploitation of orbital resources, and authorisations.

A sole licence shall be required to provide all kinds of telecommunications and broadcasting public services including public Wi-Fi services. The sole licence may be granted for commercial, public, private or social use, for a term of up to 30 years and may be extended for up to equal terms. Statutorily, the Federal Telecommunications Institute shall analyse and assess the documents submitted for this application within a term of 60 calendar days, and the Institute may request additional information when necessary. Once such term has expired and all requirements have been met, according to the Institute, the sole licence shall be granted.

On 25 November 2013, the Mexican government published an action plan called Estrategia Digital Nacional with the purpose of providing public broadband internet access through certain programmes, including the Mexico Conectado programme. Generally, the licence to provide such public Wi-Fi services shall be granted through a public bidding process.

The licence to use, enjoy or exploit frequency bands of the radio spectrum for a determined use and for the occupation and exploitation of orbital resources, shall be granted for a term of up to 20 years and may be extended for up to equal terms. When the exploitation of the services subject to such licence requires a sole licence, it may be granted in the same administrative act.

The licence for the use, enjoyment or exploitation of the radio spectrum for commercial, and in some cases for private, use shall only be granted through a public auction.

The radio spectrum licences for public or social use shall be granted through direct allocation for a term of up to 15 years and may be extended for up to equal terms. This licence shall not be for profit purposes, and licensees shall not share the radio spectrum with third parties. Upon meeting the requirements of this application, the Institute shall resolve accordingly within a term of 120 business days after submitting the application.

Authorisation from the Federal Telecommunications Institute is required to:

- incorporate and operate or exploit a telecommunications service provider without licensee status;
- install, operate or exploit terrestrial stations to transmit satellite signals;
- install telecommunications and broadcasting equipment that crosses the national borders;
- exploit landing rights; and

- temporarily use spectrum bands for diplomatic visits. The installation and operation of transmitting earth stations do not require any type of authorisation.

These authorisations shall be valid for a term of up to 10 years and may be extended for up to equal terms; the process to obtain such authorisation shall be resolved no later than 30 business days after submitting the application. Once this period expires with no resolution from the Institute, the authorisation shall be considered as granted.

According to the Federal Telecommunications and Broadcasting Law, current licensees may obtain authorisation from the Institute to provide additional services to those indicated in the original licence or to migrate to a sole licence.

The applicable payable fees regarding the licensing and authorisation regime are the following:

- sole licence to provide all kinds of telecommunications and broadcasting public services, 18,627.27 Mexican pesos, and for its renewal, 8,241.22 pesos;
- licence to use, enjoy or exploit the radio spectrum for a determined use or for the occupation and exploitation of orbital resources, 32,584.40 pesos, and for its renewal, 13,791.53 pesos;
- authorisation to exploit landing rights, 9,996.72 pesos, and for its renewal, 5,666.63 pesos;
- authorisation to incorporate and operate or exploit a telecommunications service provider without licensee status, 6,444 pesos, and for its renewal, 3,541.63 pesos;
- authorisation to install, operate or exploit earth stations to transmit satellite signals, 3,850.17 pesos, and for its renewal, 2,950.60 pesos;
- migrating to a sole licence, 12,395.69 pesos; and
- authorisation to provide an additional service to those indicated in the original licence that use the radio spectrum, 20,582.74 pesos, and that do not use the radio spectrum, 7,525.63 pesos.

Flexibility in spectrum use

- 3 Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

Spectrum licences granted for commercial or private use shall contain, among other things, the permitted frequency band subject to the licence, usage terms and geographic coverage zone where they shall be used, enjoyed or exploited. Only the spectrum licences granted for commercial or, in some cases, for private use, may be assigned to third parties with prior authorisation from the Federal Telecommunications Institute. Licensed spectrum is generally not tradable.

Ex-ante regulatory obligations

- 4 Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

The public telecommunications network licensees shall, among others:

- interconnect, directly or indirectly, their networks at the request of other licensees, and shall refrain from performing acts to delay, obstruct or cause service inefficiency;
- offer and allow effective number portability;
- refrain from charging long-distance communications to national destinations;
- provide non-discriminatory service to the public; and
- refrain from establishing contractual or any other type of barriers to prevent other licensees from installing or accessing telecommunications infrastructure in shared real estate properties.

Licensees of public telecommunications networks providing mobile services may freely sign agreements regarding visiting user services; the execution of such agreements shall be mandatory to preponderant economic agents in the telecommunications sector or agents with substantial power (as those terms are defined hereinafter).

Also, the Federal Telecommunications and Broadcasting Law sets forth that public telecommunications network licensees shall adopt a transparent approach to guarantee interconnection and interoperability of their networks with other licensees, in a non-discriminatory basis.

The Federal Telecommunications Institute is vested with the authority to determine the existence of preponderant economic agents in broadcasting and telecommunications sectors, and to impose the measures deemed necessary to allow competition and free market participation. These measures may include, among others, service offer and quality, exclusive agreements, usage limitations on telecommunications terminal equipment, asymmetric regulation on tariffs and network infrastructure, including unbundling of essential resources and accounting, functional or structural separation of such agents.

The Institute shall define economic agents who have, directly or indirectly, a national market participation of more than 50 per cent in telecommunications and broadcasting services, as preponderant. Market participation shall be measured by number of users, audience, network traffic or capacity used.

Furthermore, the Institute shall declare whether an economic agent has substantial power in telecommunications and broadcasting relevant markets, pursuant to the procedure established in the Federal Competition Law.

Also, the Federal Telecommunications Institute is empowered to declare, at any time, preponderant economic agents, as well as economic agents with substantial power in any of the relevant markets of the telecommunications and broadcasting sectors.

Preponderant economic agents in the telecommunication sector or agents with substantial power shall be subject, among other things, to the following obligations: to register with the Institute a list of unbundled interconnection services, to submit before the Institute at least once a year, to separate accounting and cost-accounting of interconnection services, and not to carry out practices that prevent or limit the efficient use of infrastructure devoted to interconnection.

For the purposes of promoting competition, the Institute has the authority to impose specific obligations and limitations on agents with substantial power on matters regarding information, quality, rates, commercial offers and billing.

Structural or functional separation

- 5 Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

As mentioned in question 4, structural and functional separation has been introduced in the Federal Telecommunications and Broadcasting Law, thus the Institute may impose measures to promote competition in such sectors, including asymmetric regulation, such as unbundling of essential resources and functional or structural separation of preponderant economic agents.

The Law defines 'unbundling' as the separation of physical elements, including fibre optic, technical and logical, functions or services of the local networks of the preponderant economic agent in the telecommunications sector, or of the agent with national substantial power in the relevant market of access services to end users.

The Institute also has the authority to establish measures and impose specific obligations to allow the effective unbundling of the local networks of the preponderant economic agent in the telecommunications

sector or the agent with national substantial power in the relevant market of access services to end users.

Breaching or violating the Institute's resolutions regarding local network unbundling, divestiture of assets, rights or other necessary resources or breach of asymmetric regulation, may result in the revocation of the corresponding licences and authorisations.

Universal service obligations and financing

6 | Outline any universal service obligations. How is provision of these services financed?

The Mexican Constitution and the Federal Telecommunications and Broadcasting Law impose upon the state certain responsibilities regarding public telecommunications services. The state shall guarantee that telecommunication services, including broadband and internet, are provided under conditions of competition, quality, plurality, universal coverage, interconnection, convergence, continuity and free access.

The Mexican Constitution defines 'universal coverage' as general public access to telecommunications services that shall be subject to availability, affordability and accessibility conditions. Consequently, the Ministry of Communications and Transportation shall prepare annually a social coverage programme and a public connectivity programme. The purpose of these social programmes is to increase network coverage and penetration of telecommunications services in such priority areas as determined by the Ministry.

The sole licence and spectrum licence for commercial and private use shall consider, among others, the programmes and commitments regarding investments, quality, geographic, demographic or social coverage zones, public connectivity and contribution to universal coverage determined by the Institute in considering the annual programmes prepared by the Ministry.

In 2002, pursuant to the provisions set forth in the previous Federal Telecommunications Law, a telecommunications social coverage fund was created to ensure the provision of telecommunications services in Mexican territory and to offer funding to public telecommunications network licensees aimed at rural communities. To this end, the Mexican Congress approved funding for the Telecommunications Social Coverage Fund, which is governed by a technical committee composed of six federal government representatives.

Number allocation and portability

7 | Describe the number allocation scheme and number portability regime in your jurisdiction.

The Federal Telecommunications and Broadcasting Law grants the Federal Telecommunications Institute the authority to create, update and manage the technical plan for number allocation. Such plan sets forth that licensees and authorised telecommunication service providers shall obtain number allocation by submitting an application before the Federal Telecommunications Institute. In general, such request shall be submitted at least three or four months (depending on the type of number allocation requested) before the date on which such number allocation is intended to be used. The process of obtaining number allocation shall be resolved no later than 60 business days after submitting the application. To determine whether the requested number allocation proceeds, the Federal Telecommunications Institute shall take into account the following: use given to previous number allocations, and number availability.

The Federal Telecommunications and Broadcasting Law sets forth that users have the right to keep the same telephone number when changing service provider. Effective portability shall be completed within a period not exceeding 24 hours upon submitting the corresponding

application to the service provider. This provision entered into force on 10 February 2015.

Customer terms and conditions

8 | Are customer terms and conditions in the communications sector subject to specific rules?

Customers are entitled to the rights provided for in the Federal Telecommunications and Broadcasting Law, the Federal Consumer Protection Law and the Data Protection Law.

In general, customers have the right, among others, to execute and have knowledge of the commercial conditions set forth in the standard form contract registered before the Consumer Protection Agency. Such standard form contract shall be registered with the agency and shall comply with the provisions of the Federal Telecommunications and Broadcasting Law, the Federal Consumer Protection Law and other applicable provisions. Also, pursuant to the Data Protection Law, agreements shall comply with provisions thereof and customers shall be afforded the rights thereunder.

Net neutrality

9 | Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

Licensed and authorised internet service providers shall comply with, among others, the following guidelines regarding network neutrality:

- free choice: users may access any content, application or service offered by the licensee or authorised service provider, within the legal applicable framework, without access being limited, deteriorated, restricted or discriminated against;
- non-discrimination: providers shall refrain from obstructing, interfering with, inspecting, filtering or discriminating among content, applications or services;
- privacy: providers shall maintain user privacy and network security; and
- transparency and information: providers shall publish on their web page the information regarding the features of the service offered, including traffic management policies and network administration authorised by the Institute, as well as the speed, quality, nature and guaranteed service.

Although 'zero rating' of data transmission could affect the guidelines and regulations on net neutrality mentioned above, and provided for in the Federal Telecommunications and Broadcasting Law, leading mobile telephone companies in Mexico have expanded their offerings of free navigation for social networks, messaging applications and other online services. The foregoing derives from the fact that the Federal Telecommunications Institute has not determined whether these offers affect or contravene the provision of the law. Bandwidth throttling is not permitted. On 28 June 2018, the Advisory Council of the Federal Telecommunications Institute issued a non-binding recommendation by means of which it urged all participants in the telecommunications sector to avoid practices such as 'zero rating' and 'bandwidth throttling'. The Federal Telecommunications Institute has announced that over the course of 2019, it will issue Guidelines for Networks Operations considering the neutrality principles provided under article 145 of the Federal Telecommunications and Broadcasting Law, which may include provisions in connection with the 'zero rating' practice.

Platform regulation

- 10 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

In Mexico, there are no laws or regulations that currently regulate digital platforms specifically. The Mexican FinTech Law was published in the Official Mexican Gazette on 9 March 2018 (effective as of the following day), with the purpose of regulating financial services provided by financial technology companies or institutions, their organisation and operation. Also, there are initiatives under discussion on this matter regarding regulating digital platforms that provide transportation services.

Next-Generation-Access (NGA) networks

- 11 | Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

There is no specific regulation regarding NGA networks, nor are there government financial schemes to promote broadband penetration in Mexican territory; however, the Mexican Constitution and the Federal Telecommunications and Broadcasting Law set forth that the executive branch shall publish the broadcasting and telecommunications policies and perform actions to ensure broadband internet access in buildings and facilities of the federal government; each state shall do the same in their own jurisdiction. The project for the expansion and modernisation of the public network known as 'Red Troncal', which is expected to provide connectivity within all Mexican territory, will be awarded by the Mexican government to a private enterprise through a public bidding process (see question 27).

Data protection

- 12 | Is there a specific data protection regime applicable to the communications sector?

Public telecommunications network licensees and authorised entities shall keep a record and control of all communications made, in any form, to identify accurately the following information:

- name and address of user;
- type of communication (voice, voicemail, conference and data), additional services and messaging or multimedia services used;
- necessary information to trace and identify the origin and destination of mobile communications;
- necessary information to determine date, time and duration of the communication, as well as messaging or multimedia services;
- record of date and time of the first activation of the service and location tag from the activation of the service; and
- digital location of the geographic positioning of the corresponding telephone lines.

For these purposes, the licensee shall keep the information referred to in the paragraph above, during the first 12 months, in systems that allow real-time analysis and delivery to competent authorities through electronic media. Upon completion of said period, the licensee shall keep the information for an additional 12 months in electronic storage systems, in which case, delivery of such information to the competent authorities shall take place within 48 hours upon request notification.

In general, the protection, processing and control of personal data are governed by the Data Protection Law, which sets forth that processing of personal information is subject to the consent of the owner. Such consent may be implied, which is sufficient to process general personal data, whereas express consent is required to process

financial information, and written consent is required to process sensitive information.

Cybersecurity

- 13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

In Mexico, there are no laws or regulations that currently regulate cybersecurity specifically. On 13 November 2017, the Mexican government published the Cybersecurity National Strategy. This strategy defines objectives and cross-cutting themes and reflects the guiding principles regarding the articulation of efforts from individuals, civil society, and private and public organisations in the field of cybersecurity. Additionally, in October 2017, the Mexican government created the Cybersecurity Sub-Commission, chaired by the Ministry of the Interior.

Big data

- 14 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

In Mexico, there are no laws or regulations that currently regulate big data specifically; also, there have not been any relevant initiatives on this matter. Companies seeking to participate in big data operations shall ensure that their proposed activities comply with the Data Protection Law that is applicable to the data involved in their operations.

Data localisation

- 15 | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

In Mexico, there are no laws or regulations that currently regulate data localisation specifically. The Data Protection Law allows cross-border transfers of personal information, provided that the data subject gives informed prior consent.

Key trends and expected changes

- 16 | Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

In Mexico, communications and media sectors fall under the same legal framework; therefore, issues regarding emerging trends and hot topics will be addressed in question 27.

MEDIA

Regulatory and institutional structure

- 17 | Summarise the regulatory framework for the media sector in your jurisdiction.

As mentioned in question 1, the key regulatory framework for the media sector in Mexico is comprised in the following statutes: the Federal Telecommunications and Broadcasting Law; the Law for the Public Broadcasting System of the Mexican State; and the Law on General Communications.

According to said regulatory framework, the Institute is vested with the authority to regulate, promote and oversee the use, enjoyment and exploitation of the radio spectrum, orbital resources, satellite services, public telecommunications networks, and broadcasting and telecommunications provisions.

As mentioned in the answer to question 2, the Institute is empowered to grant, revoke, renew or modify licences and authorisations on broadcasting and telecommunications sectors, as well as to authorise

assignments or changes of control of licensed and authorised individuals or business entities. The Institute also has the authority to regulate matters related to antitrust and fair trading in such sectors.

Ownership restrictions

18 | Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

According to the Foreign Investment Law, direct foreign investment is allowed up to 49 per cent for both broadcasting services, subject to a standard of reciprocity, and printing and publishing newspapers for distribution in Mexican territory.

There is no specific regulation regarding cross-ownership of newspaper companies and telecommunications and broadcasting companies. However, the Federal Telecommunications and Broadcasting Law sets limits regarding broadcasting and telecommunications licensees that prevent or restrict access to plural information in the same market or in the same geographic coverage zone.

For that purpose, the Institute shall order pay-television licensees to include in their service those channels that carry news or information programmes of public interest, to guarantee access to plural information in a timely manner. Also, pay-television licensees shall include at least three channels, in which the content is predominantly produced by national independent programmers, whose funding is mostly Mexican in origin.

Licensing requirements

19 | What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

As mentioned in questions 1 and 2, pursuant to the Federal Telecommunications and Broadcasting Law, the Institute is empowered to grant the sole licence. The sole licence grants the right to provide, in a convergent manner, all kinds of public telecommunications and broadcasting services. The licensee requiring the use of frequency bands of the radio spectrum for broadcasting purposes shall obtain the appropriate licence separately.

The sole licence shall be granted for commercial, public, private or social use for a term of up to 30 years and may be extended for up to equal terms. The interested party in obtaining a sole licence shall submit a request containing, at least, the following information: name and address of the applicant, general characteristics of the project, and documents and information attesting their technical, legal and administrative conditions.

To obtain the sole licence from the Institute shall take a minimum of 60 calendar days upon submitting the application; however, the Institute may request additional information where necessary. Once the agency has concluded the analysis and assessment of the documents submitted for this application within such period, and all requirements have been met, the sole licence shall be granted.

The services provided by the licensees shall not grant the privilege or distinction to create any kind of discrimination, and in the case of individuals, all discrimination motivated by ethnic or national origin, gender, age, disability, social background, health condition, religion, sexual orientation, marital status or anything else that undermines human dignity or with the purpose of nullifying or impairing the rights and freedoms of individuals shall be prohibited.

The spectrum licence for broadcasting purposes shall be granted for a term of up to 20 years and may be extended for up to equal terms.

This licence for commercial and, in some cases, for private use, shall be granted only through public auctions with prior payment of the corresponding fee.

When requesting a spectrum licence to provide broadcasting services that involves the participation of foreign investment, a prior and favourable opinion shall be required from the Foreign Investment Commission, and this agency shall verify the limits of foreign investment set forth in the Mexican Constitution and the Foreign Investment Law.

When granting a broadcasting licence, the Institute may consider the following factors, among others:

- economic proposal;
- coverage, quality and innovation;
- prevention of market concentration that conflicts with the public interest;
- possible entry of new competition into the market; and
- consistency with the licence programme.

Foreign programmes and local content requirements

20 | Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

There is no specific regulation that restricts or limits the amount of local or foreign content broadcasted. However, the Federal Telecommunications and Broadcasting Law sets forth certain rules and incentives regarding content requirements that shall be followed by licensees.

Broadcasted programming shall promote, among other things: family integration; sound child development; artistic, historical and cultural principles; and equality between men and women.

For the purpose of promoting free and harmonious child and adolescent development, broadcasting aimed at this sector shall, among other criteria:

- broadcast programmes and information to support cultural, ethical and social principles;
- avoid content that stimulates or justifies violence; and
- foster interest in knowledge, particularly with regard to scientific, artistic and social matters.

Broadcasting licensees shall use the Spanish language in their transmissions; if transmissions are in a foreign language, subtitles or translation into Spanish shall be used. The use of foreign languages without subtitles and translation into Spanish may be authorised by the Ministry of Interior.

Pay television and audio licensees shall retransmit broadcasting signals of federal institutions free of charge, and shall reserve channels for the transmission of television signals from federal institutions, as indicated by the executive branch, pursuant to the following: one channel, when the service contains between 31 and 37 channels; two channels, when the service contains between 38 and 45 channels; and three channels, when the service contains between 46 and 64 channels. If there are more than 64 channels, the reserve shall increase by one channel for every 32 channels.

When the service contains up to 30 channels, the Ministry of Communications and Transportation may require that a specific channel devote up to six hours daily to transmit programming indicated by the Ministry of the Interior.

The incentives for licensees regarding local content programming are that those covering at least 20 per cent of their programming with national production may increase advertising time up to two percentage points, and those covering at least 20 per cent of their programming with national independent production may increase advertising time up to five percentage points.

Advertising

- 21 | How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

The Federal Telecommunications and Broadcasting Law sets forth that broadcasting, pay television, programmers and signal operator licensees shall maintain a prudent balance between advertising and programming transmitted daily.

Broadcasting licensees shall apply, among others, the following rules: that in television stations, commercial advertising time shall not exceed 18 per cent of the total transmission time per channel, and in radio stations, commercial advertising time shall not exceed 40 per cent of the total transmission time per channel.

Pay television licensees shall transmit, daily and per channel, up to six minutes of publicity in every hour of transmission. For this purpose, publicity contained in retransmitted broadcast signals and own channel advertising shall not be deemed as publicity.

Must-carry obligations

- 22 | Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

Broadcast television service licensees shall enable pay television service licensees to retransmit their signal, free of charge and in a non-discriminatory manner, within the same geographic coverage zone, in full, simultaneously and without any changes, including advertising, and with the same quality of the broadcast signal.

Pay television service licensees shall also retransmit the broadcast television signal, free of charge and in a non-discriminatory manner, within the same geographic coverage zone, in full, simultaneously and without changes, including advertising and with the same quality of the broadcast signal, and shall include such retransmission in their services, with no additional cost.

Satellite pay television service licensees shall only retransmit broadcast signals with coverage of 50 per cent or more of the Mexican territory. All pay-television licensees shall retransmit broadcast signals by federal institutions.

Public telecommunications networks or broadcasting television licensees, declared by the Institute as agents with substantial power in either market or as a preponderant economic agent, shall not be entitled to the gratuitous rule of retransmitting signals and under no circumstance shall this be reflected as an additional cost of the services provided to users.

Regulation of new media content

- 23 | Is new media content and its delivery regulated differently from traditional broadcast media? How?

There is no specific regulation regarding new media content; however, the right to information, expression and to receive content through public broadcasting services and pay television services is free, and shall not be subject to any judicial or administrative prosecution or investigation, nor any limitation or prior censorship, and shall be exercised in accordance with the provisions of the Mexican Constitution, international treaties and applicable laws.

Digital switchover

- 24 | When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The transition to digital broadcasting went into effect on 31 December 2015. Original licensees to use the 700MHz frequency band freed up by the switchover shall return them to the Mexican government.

At least 90MHz of spectrum freed up by the digital switchover shall be reallocated to the shared public telecommunications network known as Red Compartida.

Digital formats

- 25 | Does regulation restrict how broadcasters can use their spectrum?

The policy for the transition to Digital Terrestrial Television (DTT) sets forth the following rules, among others, regarding digital formats:

- A/53 ATSC is the transmission standard that shall be used by television licensees;
- television licensees transmitting DTT shall transmit at least one channel with A/53 ATSC; and
- fixed DTT services shall be transmitted in standard definition quality.

On 17 February 2015, the General Guidelines for Multi-Channelling Access were published in the Official Mexican Gazette for the purpose of regulating the authorisation and operating conditions for multi-channelling access. Such authorisation shall be granted by the Federal Telecommunications Institute.

Broadcasting licensees with access to television multi-channelling shall transmit at least one channel in high-definition quality, in accordance with the terms provided for in the policy for the transition to DTT.

Media plurality

- 26 | Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

No specific media plurality rules are in place. The Mexican Constitution sets forth that the state shall guarantee that telecommunications and broadcasting services are provided, subject to, among other conditions, competition, quality and plurality.

Also, the Federal Telecommunications and Broadcasting Law sets forth provisions regarding cross-ownership and rights of the audience, in which plurality is contemplated. Such rights include providing the users with the benefits of culture, plurality and authenticity of the information.

As mentioned in question 18, this law requires certain conduct from licensees regarding cross-ownership, which shall not refrain or limit access to plural information.

Key trends and expected changes

- 27 | Provide a summary of key emerging trends and hot topics in media regulation in your country.

On 21 March 2018, the shared public telecommunications network known as Red Compartida started operations with more than 30 per cent coverage in the country. Coverage of 85 per cent of the country is expected by the end of 2021 and the project should be completed before January 2024 with 92.2 per cent of coverage. In addition, the guidelines of the public bidding for the expansion and modernisation of the public network known as Red Troncal were originally issued in June 2018. The expansion process's purpose is to transform the Red Troncal into a wider

network that provides national coverage. The execution date of the APP Agreement was scheduled to occur in November 2018, in accordance with the original calendar. Nevertheless, because of the recent change of administration in Mexico, the bid process and the calendar were amended so that the execution of the APP Agreement is now planned to occur in July 2019.

On 30 November 2018, US President Donald Trump, Canadian Prime Minister Justin Trudeau and former Mexican President Enrique Peña Nieto signed the US–Mexico–Canada Agreement (the USMCA) which will replace the North American Free Trade Agreement, subject to ratification by the respective Congresses. Chapter 18 of the USMCA includes several provisions for purposes of promoting the offer of telecommunications services in the market of the United States, Mexico and Canada, the latter by means of accomplishing better conditions through an enhanced and effective competition. For instance, article 18.4 of the USMCA specifies that each of the parties shall ensure that a supplier of public telecommunications services in its territory provides, directly or indirectly within its territory, interconnection with a supplier of public telecommunications services of another party, under no discriminatory terms, conditions and rates. Furthermore, the USMCA also provides that the telecommunications regulatory body of each of the parties (in case of Mexico, the Federal Telecommunications Institute) shall be vested with the authority to require interconnection at reasonable rates. Once ratified by the respective Congresses, the USMCA will become effective in Mexico and may result in the amendment of several provisions of the Federal Telecommunications and Broadcasting Law.

In February 2019, the Supreme Court declared as unconstitutional section IV of article 298 B of the Federal Telecommunications and Broadcasting Law. This section states that if a licensee breaches any of the provisions of the referred law, secondary regulations, administrative provisions, fundamental technical plans or any other general provisions issued by the Federal Telecommunications Institute, it will be subject to a fine for a minimum amount equivalent to 1 per cent of the licensee's revenues. The unconstitutional declaration was issued on the grounds that the referred fine results significantly excessive. As a result, in case any licensee incurs in such conduct, it may be subject to a fine that might be less to an amount equivalent to 1 per cent of its total revenues, depending on the type of breach.

Currently, no tax amendments or regulations for this specific sector are expected.



Julián J Garza C

jgarza@nhg.com.mx

Paulina Bracamontes B

pbracamontes@nhg.com.mx

Torre Arcos, Paseo de los Tamarindos 400-B
7th Floor
Bosques de las Lomas
05120 Mexico City
Mexico
Tel: +52 55 4170 3000
Fax: +52 55 2167 3099
www.nhg.com.mx

shall not be subject to injunction. This trial shall be heard by specialised judges and courts in matters regarding antitrust, telecommunications and broadcasting.

Competition law developments

- 30** Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

In August 2017, the Supreme Court ruled that the Federal Telecommunications Institute is the sole regulator in matters pertaining to telecoms and media. Such ruling resulted in the elimination of the zero interconnection rate exclusively for the benefit of one of the players in the industry, which was an asymmetric resolution imposed by the Congress (not by the Federal Telecommunications Institute) on the preponderant economic agent in the telecommunications industry. Subsequently, the Institute imposed a new interconnection rate for the benefit of such player as preponderant economic agent in the telecommunications industry. Such interconnection rate was applicable during 2018 and resulted in more than a 50 per cent decrease of the asymmetric regulation previously imposed on such preponderant economic agent. Competitors of the telecommunications preponderant economic agent have expressed their disappointment and dissatisfaction with such new interconnection rate. Additionally, in April 2018, the Supreme Court issued a second ruling that also resulted in the elimination of the zero interconnection rate, but this time also for the benefit of other entities.

Also, several telecommunications network operators complained to the Federal Telecommunications Institute about various defaults of the obligations imposed on the telecommunications preponderant economic agent, without any sanctions. On 27 February 2018, the Federal Telecommunications Institute approved the unbundling plan for the preponderant economic agent in the telecommunications industry, known as the Functional Unbundling Plan. According to this plan, the new company shall exclusively provide wholesale services.

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

- 28** Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The Federal Telecommunications Institute is vested with the authority, as an autonomous body, independent in its decisions and functions, to regulate the communications and media sectors in Mexico. The Institute also has the authority in antitrust matters related to telecommunications and broadcasting sectors, in accordance with the Federal Competition Law.

Appeal procedure

- 29** How can decisions of the regulators be challenged and on what bases?

General rules and actions from the Institute may be challenged as a matter of law or procedure only through an indirect *amparo* trial and

Other titles available in this series

Acquisition Finance	Distribution & Agency	Islamic Finance & Markets	Real Estate M&A
Advertising & Marketing	Domains & Domain Names	Joint Ventures	Renewable Energy
Agribusiness	Dominance	Labour & Employment	Restructuring & Insolvency
Air Transport	e-Commerce	Legal Privilege & Professional Secrecy	Right of Publicity
Anti-Corruption Regulation	Electricity Regulation	Licensing	Risk & Compliance Management
Anti-Money Laundering	Energy Disputes	Life Sciences	Securities Finance
Appeals	Enforcement of Foreign Judgments	Litigation Funding	Securities Litigation
Arbitration	Environment & Climate Regulation	Loans & Secured Financing	Shareholder Activism & Engagement
Art Law	Equity Derivatives	M&A Litigation	Ship Finance
Asset Recovery	Executive Compensation & Employee Benefits	Mediation	Shipbuilding
Automotive	Financial Services Compliance	Merger Control	Shipping
Aviation Finance & Leasing	Financial Services Litigation	Mining	Sovereign Immunity
Aviation Liability	Fintech	Oil Regulation	Sports Law
Banking Regulation	Foreign Investment Review	Patents	State Aid
Cartel Regulation	Franchise	Pensions & Retirement Plans	Structured Finance & Securitisation
Class Actions	Fund Management	Pharmaceutical Antitrust	Tax Controversy
Cloud Computing	Gaming	Ports & Terminals	Tax on Inbound Investment
Commercial Contracts	Gas Regulation	Private Antitrust Litigation	Technology M&A
Competition Compliance	Government Investigations	Private Banking & Wealth Management	Telecoms & Media
Complex Commercial Litigation	Government Relations	Private Client	Trade & Customs
Construction	Healthcare Enforcement & Litigation	Private Equity	Trademarks
Copyright	High-Yield Debt	Private M&A	Transfer Pricing
Corporate Governance	Initial Public Offerings	Product Liability	Vertical Agreements
Corporate Immigration	Insurance & Reinsurance	Product Recall	
Corporate Reorganisations	Insurance Litigation	Project Finance	
Cybersecurity	Intellectual Property & Antitrust	Public M&A	
Data Protection & Privacy	Investment Treaty Arbitration	Public Procurement	
Debt Capital Markets		Public-Private Partnerships	
Defence & Security		Rail Transport	
Procurement		Real Estate	
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)