

# Mexico telecoms overhaul poised for enactment

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**With Mexico's telecoms bill having obtained the final stamp approval before enactment, lawyers are gearing up for demand from clients as they grapple with more stringent antitrust requirements and prepare for investment opportunities arising from upcoming bidding rounds and assets up for grabs as dominant players like América Móvil divest.**

The secondary legislation fleshing out the suite of constitutional reforms enacted last year gives a blueprint for the telecoms industry aimed at boosting competition in a market seen as dominated by two players, Carlos Slim's América Móvil and broadcaster Televisa.

The reforms have removed foreign investment restrictions; created a new regulator for the industry with antitrust powers, the Federal Telecommunications Institute (IFT); as well as introduced 50 per cent maximum thresholds for ownership of any given service.

The lower house of Congress gave the bill the final seal of approval on Wednesday in the early hours, the last step before the bill is sent over to President Enrique Peña Nieto for enactment, expected to take place in the coming days.

Just as the bill was being passed, Slim was taking steps to reduce his market share in a bid to appease the new telecoms regulator. América Móvil said in a filing on Tuesday that it had decided to divest some assets to a new independent company, reducing its share in landlines and mobile phones to below the 50 per cent threshold. The company will also split its wireless towers from the rest of its business and cede control of satellite television provider Dish Mexico. "The decision intends to stop América Móvil from being considered a predominant player, therefore preventing it from being subject to the specific antitrust measures [such as forced divestitures], and enabling it to provide pay-television services, which right now it is forbidden from doing so," says [Barrera, Siqueiros y Torres Landa](#) partner Federico Hernandez Arroyo.

Fernando Carreño, of [Von Wobeser y Sierra SC](#) in Mexico City, says the decision to break up América Móvil is understandable, if not expected. "The IFT now has such important powers to appoint 'prevailing economic agents' and this has a great impact on the development and management of the activities of these companies," he says.

Slim has been fiercely critical of the new telecoms laws, which he said would allow rivals to free-ride on his company's investment given that the regulator is also now allowed to force companies to divest assets if they have too much control over the industry.

There have been accusations elsewhere that the bill benefits Televisa while unfairly penalising Carlos Slim. According to Arroyo, the way in which dominant players in the telecoms market have been classified fails to group Televisa's share of the pay-television market along with its portion of the free-to-air segment, which means it is not considered the dominant player in the broadcasting industry, whereas América Móvil is classified as dominant in the phone market. "This means that as long as América Móvil is considered dominant, Televisa may be allowed to acquire companies without the need to notify the market concentration under the economic competition law, but rather by following a simpler procedure," he says.

[Mijares, Angoitia, Cortés y Fuentes SC](#) partner Francisco Fuentes-Ostos, however, argues that since the constitutional reform came into effect last year, Televisa (one of the firm's clients) has been required to license on a non-discriminatory basis and for free of charge its over-the-air TV signal to pay-TV concession holders.



"The implementing legislation confirms this 'must offer' obligations," he says. Furthermore, the new regulator is already in the process of awarding frequencies through a bid process to create two new over-the-air TV signal competitors with national coverage – a move which will also help loosen Televisa's grip on the sector.

Many in the legal community believe that the statute, which replaces general telecoms legislation dating from 1995 and an earlier broadcasting legal framework from 1960, is long overdue. "It's designed to foster competition in a way that perhaps should have been thought about when the telecoms market was essentially opened 20-odd years ago," says [Creel, García-Cuellar, Aiza y Enriquez SC](#) partner Jean Michel Enriquez "It's not a visionary or forward-looking statute in many ways."

Enriquez says that the statute contains a number of grey areas, for instance it is not always clear whether any given telecoms platform is considered a regulated industry, or governed by concession agreements – confusion which will only continue to grow as new technologies are rolled out in the country.

Similarly, Arroyo says that the bill has met with criticism over the powers which have been granted to IFT, as well as with respect to the asymmetric regulation of dominant agents in the broadcasting sector, which obliged them to pay higher mobile termination rates (MTRs) to smaller peers and receive lower rates from them for network interconnection, and the way in which it opens up the possibility of government monitoring of the telecoms industry.

Nevertheless for the most part the new legislation has been broadly welcomed. For one, it lays the groundwork for bidding rounds for two new television channels with national coverage, as well as confirming Mexico's move towards a digital television transition, although Arroyo notes that the deadline for this - December next year - is "improbable". The legislation also seeks to protect consumer rights by allowing mobile phone and fixed-line users to make unlimited long-distance calls within Mexico without additional charge; making it easier to change service providers for mobile phone users; offering longer expiry dates for mobile phone and obliging telecoms companies to share infrastructure with competitors.

Lawyers in Mexico are already testifying to an uptick in telecoms work, to which firms are responding by developing standalone telecoms practices in order to handle more specialised client requests. The more stringent competition rules in the sector have already resulted in increased demand from clients for assistance in dealing with the new regulator. "We are definitely seeing a renewed interest among telecoms companies internationally in the marketplace in Mexico," says Enriquez.

[Baker & McKenzie \(Mexico\)](#) partner Sergio Legorreta adds that there a number of concrete innovations introduced in the bill which have resulted in renewed interest in Mexico's telecoms industry, such as the bidding rounds for the two for national TV chains, the auctioning of two satellite orbits, and the assets up for grabs as a result of forced divestitures arising from asymmetric regulations for dominant market players. "These have already resulted in new mobile virtual network operators entering the market, major production studios aiming to invest in Mexico as well as the potential creation of a sizeable wholesale wireless operator in the 700 MHz frequency," he says.

## Comments

*There are currently no comments.*