

THE
TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

ELEVENTH EDITION

Editor
Matthew T Murchison

THE LAWREVIEWS

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MEDIA AND
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PREFACE

The Technology, Media and Telecommunications Review is now in its 11th edition, and I am excited to be taking the reins of this publication after a decade under the steady hand of long-time editor John Janka. This Review occupies a unique space in the literature on TMT issues. Rather than serving a traditional legal treatise, this publication aims to provide a practical, business-focused survey of law and policy in this arena, along with insights into how this legal and policy landscape continues to evolve from year to year. In the dynamic and ever-changing TMT sector, such perspective is vitally important. And the scope of this Review is global, now covering 20 jurisdictions.

Covid-19 shook the world in 2020, and its reverberations in the TMT sector have been profound. As the threat of infection has led to widespread lockdowns, the importance of connectivity has never been greater nor more obvious. For many businesses, remote working has become the rule rather than the exception. Many schools have switched to distance learning formats. Tele-health is on the rise as doctors check in on patients via videoconference. Even tasks as mundane as grocery shopping have shifted online. And broadband connectivity, where available, has made it all possible.

For policymakers, the experience of covid-19 has begun to reshape their understanding of the TMT arena and to refocus their policy goals. The sudden shift to remote working and distance learning has stress-tested broadband networks across the world – providing a ‘natural experiment’ for determining whether existing policies have yielded robust systems capable of handling substantial increases in internet traffic. In the European Union, officials called on video-streaming platforms to downgrade high-definition content temporarily to avoid overly straining broadband networks at the start of the pandemic. In the United States, meanwhile, policymakers touted that such measures were not necessary, and have attributed the apparent resilience of broadband networks in the country to deregulatory policies.

At the same time, the pandemic has prompted new initiatives to ensure, improve and expand broadband connectivity for consumers going forward. In various jurisdictions, policymakers are moving forward with subsidy programmes and other efforts to spur the deployment of advanced networks more deeply into unserved and underserved areas. Regulators also have taken steps to preserve internet access where it already exists, including by having service providers ‘pledge’ that they will not disconnect customers for non-payment in light of the pandemic, or by pursuing more prescriptive measures. In short, covid-19 has been part cautionary tale, part rallying cry, and its long-term impact on the TMT sector remains to be seen.

New technologies likewise have required new approaches and perspectives by policymakers. A notable example is the ongoing deployment of 5G wireless networks, as regulators continue to look for ways to facilitate such deployments. These initiatives take a

variety of forms, and frequently include efforts to free up more spectrum resources, including by adopting new rules for ‘sharing’ spectrum and by reallocating spectrum from one use to another. 5G spectrum was a significant focus of the World Radio-communication Conference (WRC) of the International Telecommunication Union (ITU), held in late 2019 in Sharm el-Sheikh, Egypt. And multiple jurisdictions have continued to auction off wireless licences in bands newly designated for 5G deployment, capitalising on service providers’ strong demand for expanded access for spectrum.

Another example is the planned deployment of multiple large satellite constellations in low-earth orbit to support new broadband services. The providers proposing these networks say they will greatly expand the availability of high-speed internet access service. At the same time, the sheer scale of the planned systems has raised fresh questions about how best to prevent accidental collisions and ensure equitable sharing of spectrum resources.

Even with so many newer issues swirling in the TMT sector, familiar topics have remained in the spotlight as well. Cue network neutrality, the principle that consumers should benefit from an ‘open internet’ where bits are transmitted in a non-discriminatory manner, without regard for their source, ownership or destination. The basic principle has been around for well over a decade, but policymakers are still sorting out how best to effectuate it without undermining investment and innovation in broadband services. In the United States, network neutrality has become a point of contention between the federal government, which has opted for a light-touch approach, and certain states that wish to impose bright-line prohibitions on internet service providers. In Europe, new guidelines and rulings have addressed internet service providers’ ‘zero rating’ plans, which exempt certain data from counting against a customer’s usage allowance. Regulators in Asia are grappling with similar policy questions. And this debate dovetails with efforts in some jurisdictions to increase oversight of the content moderation policies of social media companies and other online platforms.

The country-specific chapters that follow recap these and other developments in the TMT arena, including updates on privacy and data security, regulation of traditional video and voice services, and media ownership. On the issue of foreign ownership in particular, communications policymakers have increasingly incorporated national security considerations into their decision-making, as evidenced by recent actions in the United States against Chinese equipment manufacturers and service providers.

Our authors from around the globe have lent their considerable insight, analysis and experience to the preparation of their respective chapters. I hope readers will find this 11th edition of *The Technology, Media and Telecommunications Review* as helpful as I have found this publication year in and year out.

Matthew T Murchison

Latham & Watkins LLP

Washington, DC

November 2020

MEXICO

Ricardo Ríos Ferrer, María Fernanda Palacios Medina and Sonia Cancino Peralta¹

I OVERVIEW

Following the recommendations in an OECD review performed in 2012 regarding telecommunications, broadcasting, competition and investment in Mexico, in 2013 the Mexican Congress approved a constitutional reform that was followed by the publication of a new Federal Law of Telecommunications and Broadcasting (FLTB) in July 2014 and the creation of the Federal Institute of Telecommunications (FIT). This is the autonomous regulator of the telecommunications and broadcasting sector, as well as the economic competition regulator for matters related to this sector.

In compliance with the constitutional reform and the FLTB, the FIT conducted an overhaul of all the legal framework and has issued new regulations, guidelines and policies, some of which are reviewed in this document.

In 2017, the OECD reviewed the implementation of the recommendations made on 2012 and recognised that the reform had been a success (as tangible benefits had been brought), identified other areas of opportunity and emphasised that the initiative of the Shared Network (Red Compartida) that aimed to extend the wireless broadband coverage to all the population, including rural areas, was ‘the next frontier for the country’.

A new government took office in 2018, and as a result the TMT sector is facing new challenges as described in this chapter.

The Ministry of Communications and Transports (the Ministry) is the authority responsible for developing the public policy related to the telecommunications and broadcasting sector, as established in Article 9 of the FLTB.

Within the structure of the Ministry, the Undersecretariat of Communications and Technological Development (the Undersecretariat) had the task, among others, of promoting the deployment of infrastructure and high-performance networks critical for the economic and social development of Mexico. However, the current administration announced the dissolution of the Undersecretariat in mid 2020. At the time of writing, it remains to be seen which department will absorb the functions of the Undersecretariat and if such decision will have any impact on the performance of the Ministry in relation to the telecommunications and broadcasting sector.

1 Ricardo Ríos Ferrer and María Fernanda Palacios Medina are partners and Sonia Cancino Peralta is an associate at Ríos Ferrer, Guillén-Llarena, Treviño y Rivera, SC. The authors wish to extend special thanks to Pamela de Lucio Pérez and Patricia Ríos Ruiz for their assistance and collaboration in the preparation of this chapter.

i Impact of convergence

Mobile virtual network operators (MVNOs) play a relevant role to identify and serve new markets that require specialised connectivity and that traditional operators may not find attractive. Fifty per cent of MVNOs in Mexico already consider the internet of things (IoT)² connectivity as part of its offer and two of them consider this market niche as the most important or the only one in their business strategy.

Over-the-top (OTT)³ services have grown significantly in Mexico as a result of the increase in broadband access and this trend is expected to continue in the coming years. Although the cable and satellite TV segment continue to grow, global OTT service revenues reached approximately US\$38 billion in 2018, and is projected to double in 2023, according to 'Global Entertainment & Media Outlook 2019'. This study also indicates that Mexico will overtake Brazil as the largest OTT market in Latin America by 2022.

ii Trends in the sector

The Chamber of Deputies approved reforms to the Federal Law of Governmental Fees (LFD) that increase the cost of the spectrum for mobile services and internet as of 1 January 2021.

The Chamber of Deputies approved a reform to Section 44 of the Federal Tax Code, which will allow the tax administration service (SAT) to block digital platforms such as Uber, Airbnb, Netflix and Spotify if they fail to collect VAT from their customers.

In October 2020, the FIT announced the beginning of an investigation for possible anticompetitive effects in the markets related to online search services, social networks, mobile operating systems, cloud computing services and related services. This investigation is the first of its kind in Mexico.

II REGULATION

The main regulator for the telecommunications and broadcasting sectors in Mexico is the FIT. This entity was created as an autonomous constitutional body in the 2013 constitutional reform and emerged as a new entity with broader powers and authority, including acting as the main and sole authority for any economic competition matters related to the broadcasting and telecommunications sectors. Some of its main powers are to:

- a* regulate the use of the radio-electric spectrum, telecommunication networks and the provision of telecommunication and broadcasting services;
- b* grant, revoke or authorise concessions and authorisations;
- c* determine the existence of the preponderant economic agent or agents with substantial power in a specific market, and impose the corresponding measures or asymmetric regulation;
- d* issue administrative regulations, technical plans, procedures, programmes and guidelines required for compliance with the law;

2 IoT refers to the interaction of devices and connected objects and the corresponding collection, processing and transmission of relevant data.

3 OTT can be defined as video services, audio, voice or data that is transmitted over fixed or mobile internet platforms and that is generally not provided by traditional telecommunications operators.

The Ministry's participation was limited as a result of the constitutional reform, but it is the entity responsible for developing the federal government's telecommunications and broadcasting policies, as well as managing the efficient use of the satellite capacity owned by the state.

Another regulatory body that is involved in the telecommunications and broadcasting sectors is the Federal Consumers Agency (PROFECO). PROFECO is in charge of protecting, advising, defending, reconciling and representing end users and consumers before the operators that provide telecommunications services.

Also, the Federal Antitrust Commission (COFECE) has been empowered by recent landmark judicial decisions to regulate concentrations and competition matters of digital services providers.

i Main sources of law

The main sources of law in the telecommunications and broadcasting sector are the Constitution, the FLTB, the Federal Law of Economic Competition Law (FLEC), Mexican Official Standards (NOM),⁴ regulations, rules, guidelines and any other administrative or technical rulings issued by the FIT.

ii Regulated activities

The Law establishes two types of licences for the provision of telecommunications or broadcasting services in Mexico: concessions and authorisations.

The 'sole concession' allows the provision of all sort of telecommunication services except for the use of spectrum or orbital resources (geostationary orbital positions or satellite orbits assigned to Mexico). The sole concession can be granted for commercial use, public use (governmental entities), social use (cultural, scientific or educational) or private use (experimental, testing, diplomatic). Concessions are granted generally for a maximum period of 30 years, renewable for the same length of time if certain conditions are met.

The use and exploitation of frequency bands and orbital resources require a specific concession granted by the FIT for this purpose. These concessions are granted through a public bid process and are subject to the payment of a governmental fee and specific obligations, such as coverage areas.

On the other hand, an authorisation will be needed for the performance of any of the following activities:

- a* commercialisation or resale of telecommunications services;
- b* installation and operation of transmitting earth stations (receive only antennas do not required any authorisation);
- c* installation of telecommunications equipment or any transmission media that cross the borders of the national territory;
- d* landing rights from foreign satellites; and
- e* use of temporary spectrum bands for diplomatic visits.

⁴ Such as NOM 184 'Normative elements and specific obligations that suppliers must observe for the commercialisation and/or provision of telecommunications services when using a public telecommunications network.'

The process to obtain an authorisation is simpler and quicker compared to a concession. The authorisations are granted for periods of up to 10 years, renewable for equal periods.

iii Ownership and market access restrictions

The FLTB establishes restrictions regarding foreign investment participation in the provision of broadcasting services, where foreign investment can only participate up to 49 per cent, and is subject to reciprocity with investor's country.

Any other concessions and authorisations are only granted to Mexican individuals or entities, without any foreign investment restrictions.

The Constitutional Reform of 2013 introduced a new concept called 'preponderance', which applies to agents that hold in the telecommunications or broadcasting sector, a participation above 50 per cent. The FIT must determine the existence of a preponderant economic agent (whoever holds over a 50 per cent participation in the telecom or broadcasting sector) and impose asymmetrical regulations or obligations on such agent. Currently, two corporate groups have been qualified as 'preponderant economic agent': América Móvil in the telecommunications sector and Grupo Televisa in the broadcasting sector, which resulted in the issuance of some regulatory measures with the purpose of preventing abuse in the markets where they have presence, and imposing some restrictions in the provision of their services.

iv Transfers of control and assignments

Concessions (total or partial) for commercial or private use may be assigned, as long as at least three years have passed since the grant of the concession. The concessionaries will need prior approval from the FIT, who must resolve such applications within a term of 90 calendar days, and could impose conditions on the assignee.

If the concession assignment occurs between concessionaires that provide similar services in the same geographic zone, the FIT will perform an analysis to determine if the effects of such assignment have or may have antitrust effects. Also, if as a result of the assignment, the obligation to notify a merger is updated in terms of the FLEC, then the FIT will resolve such procedure in terms of applicable law.

No authorisation is required in case of an assignment of the concession if it results from the merger of companies, splits or corporate restructures, within the same control group; however, this transaction must be notified within 30 calendar days of the operation.

If a concessionaire subscribes or sells shares or equity that represent 10 per cent or more of its capital stock, it must notify the FIT before the operation is closed. After requesting the Ministry's opinion, the FIT will have a 30-day term to manifest any objection to the operation (unless an antitrust procedure is triggered).

III TELECOMMUNICATIONS & INTERNET ACCESS

In Mexico, internet and broadband access are fundamental rights guaranteed by the Constitution. The internet has a major role, since it is an enabler to other fundamental rights provided in the Constitution, such as the information access right, the right to privacy and the right of access to information and communication technology (ICT).

Internet access service providers require a 'sole concession' and must comply with the following principles regarding net neutrality: (1) free decision; (2) non-discrimination; (3) privacy; (4) transparency and information; (5) traffic management; (6) quality; and (7) infrastructure sustained development.

The FLTB establishes that the FIT must issue net neutrality guidelines for internet and broadband access service providers, which as of this date have not been published. In compliance with a court decision, in December 2019 the FIT started a public consultation that ended on 15 July 2020; however, the project of the net neutrality guidelines received numerous comments arguing that such guidelines allowed censorship from internet and broadband access service providers, since such providers could temporarily block access to content, applications or services to end users.

In November 2019, the FIT issued the 'Recommendations to Promote the Adoption of IPv6 in Mexico', which includes the FIT's proposals and recommendations for the IPv4 depletion and transition to the IPv6 in Mexico.

i Universal service

Article 9 of the FLTB provides that the Ministry, in coordination with the FIT, will promote access to ICT and broadcasting and telecommunications services, and will issue programmes that guarantee broadband access in public places, identifying the number of sites to connect each year progressively until universal coverage is reached. Likewise, the FIT will carry out the necessary actions to contribute, within the scope of its authority, to the achievement of the objectives of the universal digital inclusion and universal coverage policy established by the federal government.

In August 2019, a new public company called CFE Telecomunicaciones e Internet para Todos (CFE Telecom) was created, whose purpose is to provide non-profit telecommunications services and to guarantee right of access to ICT, including broadband and internet access. To achieve this purpose, CFE Telecom will be able to use the Federal Electricity Commission infrastructure, and was granted a sole concession title authorising it to provide internet and broadband services, but certain restrictions were imposed on CFE Telecom in order to avoid risks or distortions in the telecommunications markets. CFE Telecom:

- a* may only start operations in localities without connectivity;
- b* upon the arrival of another concessionaire or authorisation holder, provision of said services may only continue if market distortions are not generated; and
- c* must comply with the principle of transparency regarding the contributions received.

It must be noted that despite the fact that the universal connectivity has been promoted by the executive branch as one of its main goals in relation to telecom services; at the time of writing, CFE Telecom had not yet begun operations, nor published specific information on its future plans.

ii Restrictions on the provision of service

Concessionaries and authorisation holders must comply, among other things, with the following obligations:

- a* provide services with the quality commitments assumed;
- b* use an open network design that allows interconnection with their networks, if another concessionaire requests so;

- c* perform number portability as per the request of end users; and
- d* provide services on a non-discriminatory basis.

Prices charged to end users are determined by the concessionaire. However, these must be registered at the Public Registry of Concessions managed by the FIT.

In relation to end users, NOM-184-SCFI-2018 establishes specific obligations and minimum requirements for the provision of telecommunications services.

The FIT may establish restrictions for telecommunications and broadcasting providers in the event that competition risks are verified. Moreover, economic agents classified as preponderant or with 'substantial power in the relevant market' may be subject of specific obligations or restrictions including the following.

- a* Telecommunications sector:
 - asymmetric interconnection tariffs;
 - accounting separation; and
 - issuance of public offers for the provision of wholesale services.
- b* Broadcasting sector:
 - issuance of public offers for the use of their passive infrastructure;
 - restriction to acquire exclusively relevant audiovisual content;
 - prohibition to participate in any matter with the preponderant agent in telecommunications sector;
 - publication of rates and commercial conditions for advertising spaces on open TV; and
 - must-carry or must-offer obligations.

Network operators must comply with the net neutrality principles provided in the FLTB, and with the net neutrality guidelines once these are approved by the FIT.

iii Privacy and data security

Mexico has executed international treaties that provide for specific actions on cybersecurity matters. This is the case of the Additional Protocol of the Pacific Alliance Framework Agreement, which specifies in its Article 14.4 that states should take the necessary measures to guarantee the security and confidentiality of communications, and to protect the privacy and personal data of telecommunications service users. On that note, in Chapter 19 on Digital Trade of the recently ratified United States–Mexico–Canada Agreement (USMCA), establishes specific commitments regarding the protection of personal data of data users and cybersecurity.

Mexico introduced its national cybersecurity strategy in 2017, with the main objective of establishing specific cybersecurity actions applicable to social, economic and political areas, which allow the use and exploitation of ICT. However, Mexico does not have yet a specific law dedicated to cybercrime, but some specific conducts could be catalogued as digital crimes in terms of the criminal codes, such as identity theft or hacking.

On the other hand, the FLTB provides that the concessionaires and authorised operators should collaborate with the security, law enforcement and administration agencies in security tasks, such as the geographic location of mobile devices, to keep a record and control of communications, to develop specific procedures in case of a cell phone theft, among others specified in the Collaboration Guidelines on Security and Justice Matters issued by the FIT.

In terms of personal data protection, since 2009 the Mexican Constitution recognises this right in Article 16. To this date, there are two main regulations in this subject: the Federal Law for the Protection of Personal Data Held by Private Parties (for private individuals or legal entities) and the General Law for the Protection of Personal Data in Possession of Obligated Subjects (applicable to any governmental authority of the three levels of government, autonomous entities, political parties, trusts and public funds). The main authority in personal data protection matters is the National Institute of Transparency, Access to Information and Protection of Personal Data.

IV SPECTRUM POLICY

The FIT is the agency responsible for the regulation, promotion and supervision of the use and exploitation of the radioelectric spectrum and the orbital resources. Therefore, the spectrum and orbital resources are managed by the FIT, which in terms of the FLTB must perform such duty in accordance to the law and international treaties and agreements to which Mexico is party, following the recommendations of the International Telecommunications Union (ITU) and other international agencies.

However, the Ministry continues to play an important role, given that it is the authority representing the Mexican government (with the support of the FIT) before international organisations and forums (including ITU WRC), and the decisions taken in such meetings have a direct effect on the use of spectrum in the region and the country.

In order to ensure adequate planning, administration and control of the radioelectric spectrum, the FIT must update the National Chart of Frequency Allocations annually, for which it must consider the public interest, technological evolution and the ITU regulations.

In 2017, the FIT created the Technical Committee of Radioelectric Spectrum (CTER), which allows discussion between the interested parties in relation to the use, strategies, needs and studies of the radioelectric spectrum for its commercial, social or public use, as well as the development of new technologies or applications. It also allows the FIT to obtain materials and input related to spectrum management and planning that may be used by the regulator when defining its position on certain matters and creating new policies.

It must be noted that in terms of the constitutional reform (Transitory Article 17) the executive branch must include a National Programme on Radioelectric Spectrum (a Spectrum Programme) as part of the National Development Plan that defines the public policy applicable in relation to the management of the radioelectric spectrum. The last Spectrum Programme was published in September 2017 for the 2017–2018 period.

In October 2019, the FIT issued a document describing the main elements that should be considered when developing the new Spectrum Programme for 2019–2024 (in tune with the National Development Plan), but this Programme has not yet been approved. The elements to consider are:

- a* increasing spectrum availability to promote universal access to telecom and broadcasting services, including more spectrum for social and public use, international mobile telecommunications (IMT), satellite services, broadcasting and radiocommunication services;
- b* optimising the use of spectrum by identifying new mechanisms for its administration, continued reordering of the frequency bands, classification of new frequency bands as free spectrum and reinforcement of supervision actions; and

- c* developing new mechanisms for the economic valuation and the assignment of spectrum and orbital resources, including an alternative mechanism for public bids and financial methods for the spectrum valuation, as well as the fees scheme.

i Flexible spectrum use

The FIT is aware that the efficient use of the spectrum is a key factor to guarantee spectrum availability for existing and new applications and technologies, and in recent years has focused on restructuring the spectrum, by changing the authorised use for certain frequency bands, assigning spectrum for new applications and minimising or avoiding an ‘atomised use’ of the spectrum among other actions. In particular FIT has restructured and optimised the use of the following frequency bands: 410–430MHz, 440–450MHz, 450, 470MHz, 470–512MHz, 608–698MHz, 698–806MHz, 806–824/851–869MHz, 1710–1780/2210–2180MHz and 2500–2690MHz.

The Mexican regulator has initiated an analysis of the main technologies available for the dynamic access and shared used of the spectrum (including short-range radiocommunication devices) and developed some recommendations on the use of new technology and the regulatory changes required to allow implementation of such measures. We expect to see the implementation of such new schemes to access the spectrum in the near future.

In this scenario, it is worth noting the agreement executed this year between Telefónica and AT&T to share the radioelectric access network through a multioperator core network agreement, which resulted in Telefónica resigning some of its spectrum concessions and giving back to the Mexican government the whole spectrum licensed on the frequency bands of 2.5GHz and 850MHz, and part of the spectrum granted on the frequency band of 1.9GHz. Whether or not this decision may have been influenced by the high spectrum fees in Mexico, it is an example of the solutions available for the operators in terms of spectrum use. The FLTB allows the lease of spectrum for commercial purposes subject to the FIT’s prior authorisation if certain conditions are met.

ii Broadband and next-generation services spectrum use

In 2019, the Radioelectric Spectrum Unit of the FIT published a document named ‘Overview of the radioelectric spectrum in Mexico for fifth generation mobile services’ where it acknowledges that demand for broadband mobile services is increasing exponentially, and that the regulator must exercise all efforts to make more spectrum available in an efficient manner, in particular increasing the amount of spectrum assigned to international mobile telecommunications (IMT).

Mexico has allocated around 1,000MHz to IMT, to which it has assigned or is in process of assigning around 60 per cent. Moreover, several frequency bands have been set aside for IMT; however, the identification of bands is not sufficient for IMT deployment as it requires the allocation of such bands that in turn requires the development of radio interface technologies.

In preparation for IMT deployment, the FIT:

- a* has participated actively in ITU-R forums, especially the CMR-19, CITEL and COMTELCA;
- b* has started different processes to reorder frequency bands, such as the 470–512MHz and 614–698MHz mentioned before;
- c* is analysing the 3.4–3.6GHz band (extended C band) for its optimal use, given that it has been harmonised globally for 5G deployment; however, in Mexico it has been used

for fixed and mobile wireless access and FSS (fixes satellite services) services from both the 114.9° W orbital position assigned to Mexico and foreign satellites with landing rights in Mexico; and

d has discussed the use of frequency bands at CTER, among other activities.

As for the 5G mobile services, FIT has identified the frequency bands that could be used by the 5G mobile systems in Mexico, which include: 70MHz on 600MHz, 90MHz on 700MHz, 180MHz on 2.6GHz, 300MHz on 3.5GHz, 2850MHz on 26GHz, 3,000MHz on 38GHz, 1,500MHz on 42GHz, 1,000 MHz on 48GHz and 2,200MHz on 51GHz. Additionally, the FIT continues to analyse including the frequency band 27.5–29.5GHz, as this has advanced significantly in the United States.

iii Spectrum auctions and fees

The FIT recently started a public consultation process related to the bid terms and documents for the possible bidding of 41 blocks of spectrum in the 800MHz, AWS, PCS and 2.5GHz frequency bands for use on mobile broadband and telephony services.

Moreover, the FIT announced its intention to prepare the bid to licence 70MHz on the 600MHz band and from 100 to 150MHz on the 3.3–3.5GHz bands. However, this is planned for no earlier than 2021.

In relation to spectrum user fees, Mexico is ranked among the countries with the most expensive spectrum, which represents almost 12 per cent of the industry revenue, a situation that is not likely to change in the near future as the Governmental Fees Law amendment for 2021 approved by the Chamber of Deputies on 19 October 2020 provides for a 7 per cent increase on the spectrum price.

V MEDIA

i Regulation of media distribution generally

The FLTB regulates broadcasting services (TV and radio) as well as terrestrial and satellite restricted audio or television services (cable TV and DTH); in both cases a sole concession is required, and in case of broadcast TV or radio, a concession for the use of spectrum will be needed as well.

Programming and publicity, for both broadcasting or restricted audio or television services, is regulated under the FLTB.

The constitutional reform established must-carry or must-offer obligations, which means that broadcast TV concessionaires are obliged to allow restricted television concessionaires (cable TV or DTH) to retransmit its signal on a free and non-discriminatory basis; in turn the concessionaires that provide restricted televisions services are obliged to retransmit the broadcast television signal on their network.

It is important to note that at the time of writing, OTT platforms are not regulated and therefore no licence is required to operate and provide their services in Mexico; however, digital services may be subject to strict tax scrutiny.

This year, the FIT published a public consultation for the ‘Guidelines for Traffic Management and Network Administration’, which obligate concessionaries to provide mechanisms and technical support to block, filter or restrict contents or applications in a free and permanent way. The final document has not been approved.

Moreover, in 2020, a new tax scheme was approved whereby foreign companies that provide digital services in Mexico (digital platforms and applications), must collect VAT from their customers for the services provided in Mexico. Platforms such as Spotify, Netflix and Amazon have already increased their prices to final users in order to comply with this scheme. This certainly will impact the operation and future of OTTs in Mexico.

ii Internet-delivered video content

As noted above, under the current Mexican legal framework, OTT video-on-demand (VOD) providers do not require a concession or authorisation to provide services in Mexico, nor are they subject to any specific regulations as they are direct beneficiaries of the net neutrality principles. Nonetheless, as noted before, owing to a tax reform approved this year, since 1 June 2020 OTT VOD service providers are obliged to register in the Mexican taxpayer registry and to collect VAT from their users.

In recent years, Mexican consumers have been changing their consumption patterns of audiovisual content. This was confirmed by the private agency Intelligence Competitive Unit, which registered that in the second quarter of 2019 there were 8.9 million subscribers to OTT VOD, while in the second quarter of 2020 there were 10.2 million subscribers, resulting in annual growth of approximately 14.1 per cent. These figures show that this market has grown more compared to other type of services; for example, the satellite TV sector decreased by -6.5 per cent in the second quarter of 2020 and the cable TV sector grew only 2.3 per cent in the same period.

VI THE YEAR IN REVIEW

The highlights of 2020 are as follows:

- a The FIT published the Guidelines for the Deployment, Access and Shared Use of Telecommunications and Broadcasting Infrastructure – a regulatory tool that will contribute to a more efficient use of existing resources and promote greater infrastructure deployment.
- b The FIT issued guidelines that establish the quality indexes and parameters to which fixed service providers must adhere.
- c The FIT published an agreement that aims to simplify the procedures at such agency and to disappear procedures that under current regulation are not required any more.
- d The FIT held a Public Consultation on the Preliminary Draft of Regulatory Provisions on Satellite Communication, which intend to modernise the regulatory framework for communication through the satellite and orbital resources of the country, based on the authority that the law confers on the FIT.
- e The *Disney/Fox* concentration was approved by the FIT, with certain conditions regarding economic competition. Risks to competition were identified in two markets: provision and licensing of restricted channels for pay TV in the content categories ‘sports’ and ‘factual’ (which includes cultural programmes, documentaries and reality shows). The sale of Fox Sports has not been concluded.
- f The Specialised Court decided to grant full jurisdiction to COFECE in relation to the *Uber/Cornershop* merger.
- g There was a public consultation on the Draft Roadmap of the Federal Institute of Telecommunications 2020–2024.

VII CONCLUSIONS AND OUTLOOK

Mexico currently has approximately 120 million inhabitants living within a substantial territory with a very diverse geography and local culture, where telecommunication needs and penetration challenges continue to exist.

Digital services provided over existing telecom platforms have proven to be a key component allowing Mexicans to navigate the containment measures put in place to cope with the covid-19 pandemic. Indeed, what would have happened to our way of life without the internet during this time? The pandemic and the telecommunications resources have proven their fundamental role in modern society, and as such these platforms have justified the need for further research, development and deployment.

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