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ON TRADE IN SERVICES**

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**Negotiating Group on Basic Telecommunications**

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COMMUNICATION FROM CHILE

Response to Questionnaire on Basic Telecommunications

The attached communication is circulated at the request of Chile to Members of the Negotiating Group on Basic Telecommunications.

## Basic Telecommunications

### PART I

#### Definition

1. In Chile, the local public telephone service is considered to be basic telecommunications. This is the service supplied by the public telephone service concession-holder, or telephone company, not including the mobile phone system, within a service area known as the primary zone and subject to regulations concerning the obligation to provide a service, technical quality, etc. All other services additional to the local telephone service, such as long distance and other non-telephone services, are not considered basic and are not subject to service obligations.

2. Yes. There is a facilities concession, known as the intermediate services concession, under which the concession-holder may supply services to other concession-holders or licensees by providing facilities and networks intended to meet the switching or transmission requirements of the latter.

3. See the reply to question 1. All other services additional to the local telephone service, such as long distance and other non-telephone services, are not considered basic and are not subject to service obligations.

#### Market structure

4. There is no supply of this type reserved to monopoly or exclusive supplier(s).

5. The regime does not provide for this type of situation.

6. See the reply to question 4.

7. Not applicable.

8. There are none.

### PART II

#### Competition

##### A. Subsectors

The replies are applicable to all subsectors.

##### (i) Overview

The present Chilean Law establishes the principle of free competition, without legal monopolies of any type, the regulatory role of the state being totally separated from the entrepreneurial function of the private sector. Accordingly, the installation, operation and exploitation of the telecommunications network infrastructure, the terminal equipment market and the supply of public, private and value-added telecommunications services are all open to competition.

In Chile, telecommunication services may be supplied by any properly authorized person or entity, without any limitation, in particular on competing in the same geographical area. The only restriction on simultaneous participation in the provision of local and long distance public telephone services is that it should be done through separate enterprises set up as open corporations.

(ii) Modes of supply

In the case of the public telephone service, cross border supply can only be provided by intermediate services concession-holders established and equipped in the manner prescribed by law.

In other cases, there are no limitations or restrictions on cross border supply.

Nor are there any regulations concerning consumption abroad.

(iii) Market access

In general, to obtain a telecommunications services concession the applicant must be a legal entity. To be an intermediate services concession-holder providing a long distance telephone service the applicant must also be established as an open corporation. If the same concession-holder is simultaneously involved in providing local and long distance public telephone services he must do so through separate enterprises established as open corporations. The legislation places no limits on foreign ownership or equity participation.

(iv) National treatment

There is no discrimination of any kind as regards the treatment of domestic and foreign suppliers.

(v) Licensing

A concession granted by supreme decree is required for the installation, operation and exploitation of the following telecommunications services: (a) public services; (b) intermediate services supplied to telecommunications services through purpose-built facilities and networks; and (c) sound broadcasting services.

Concessions are granted to legal entities; they last 30 years for public and intermediate services and can be renewed for the same period.

Applications to be granted a concession for or to modify public and intermediate telecommunications services are submitted directly to the Ministry together with technical proposals describing in detail the facilities and the operation of the concession, the type of service and other particulars required by the laws and regulations concerned. The proposals must be signed by an engineer or a telecommunications specialist. The application must be accompanied by properly documented financial proposals relating exclusively to the installation, exploitation and operation of the concession.

To be installed, operated and exploited, private services, described in the legislation as limited services, require a licence granted by a decision taken by the Under-Secretary's Office, and valid for ten years renewable. However, limited television licences which do not take up any of the radio frequency spectrum are valid indefinitely. The Under-Secretary's Office must take a decision concerning the licence application within 60 days of its submission, and if it fails to do so the licence is considered to have been granted. A decision refusing a licence must give reasons, and the applicant may appeal against it within the periods laid down in the seventh, tenth and subsequent paragraphs of Article 13. The period laid down in paragraph 7 begins to run as soon as the person concerned has been notified of the adverse decision.

Limited services whose transmissions do not go beyond the premises in which they are installed or which, to exceed that range, use only the authorized facilities and networks of intermediate services concession-holders, inside or outside the country, do not require a licence. To qualify for these purposes the premises must be immovable by nature, not merely by destination.

B. Categories

Local/long distance/international

1. For the purposes of the public telephone service the only distinction is that made between local and long distance.

The law states that for the purposes of the public telephone service, excluding the mobile phone system, the country is divided into 24 primary zones. Any communication which extends beyond the limits of a primary zone is considered to be long distance.

2. The holder of a local public telephone service concession may use his own facilities or those of third parties and is responsible for the quality of the service on his part of the network. The holder of an intermediate services concession or carrier who supplies a long distance telephone service may use his own facilities or those of third parties and is responsible for the quality of his part of the service.

Wire-based

There are no limitations or restrictions on the use of wire-based networks by the holders of concessions or licences for any telecommunications service.

Radio-based

There are no limitations or restrictions on the use of radio-based transmission systems by the holders of concessions or licences for any telecommunications service, except where there exists a technical standard permitting the granting of only a limited number of concessions or licences, in which case the Ministry must organize a public competition.

Resale basis

3. As the holders of intermediate services concessions are authorized to use the facilities of third parties and provide services to other concession-holders or licensees, international resale is permitted for operators who hold this type of authorization.
4. The holders of public service concessions and limited (private) service licences may use the facilities of other concession-holders, in conformity with the concessions which they have been granted, including basic telecommunications. Only the tariffs for the facilities belonging to concession-holders subject to tariff-setting are regulated.

Facilities-based

5. Any legal entity may construct and operate its own networks.

Public/non-public supply

6. The regime distinguishes between the public services intended to meet the telecommunications requirements of the community in general and limited services whose purpose is to meet the specific telecommunications requirements of particular enterprises, entities or persons by prior agreement with the latter. The providers of these services may obtain the appropriate authorizations through a concession in the first case and a licence in the second.

7. Only the local public telephone service is under the obligation to provide a service. The other public services are not under obligations of this type, except for the normal requirements relating to technical standards.
8. None of the other services, whether public or limited (private), is under the obligation to provide a service.
9. The suppliers of public telephone services are under an obligation to provide a service within their service zone, defined by the supplier, for a period of two years from the date of submission of their application.
10. The only restriction is that since the technical standards for private networks are less stringent than those for public networks, the former cannot handle traffic from or to public network users.
11. At present, public pay-phones are being operated by the local telephone companies, inside or outside their service zone, and, in the case of long distance public pay-phones, by the carriers. However, the modifications required to enable any interested party to operate public pay-phones are being studied, and the telephone company will have to provide suitable lines at regulated prices.

### PART III

#### Regulatory issues

Relationship between regulatory and operational functions.

1. The suppliers are involved directly and indirectly in formulating standards and may directly, in accordance with the law, report noncompliance with the regulations and standards.
2. The authority is responsible for formulating standards and monitoring compliance.
3. Only the Under-Secretary's Office has regulatory functions at government level. There are procedures enabling suppliers to appeal, both to the appropriate administrative authority and to the courts.

Complaints by, between or against concession-holders, users and individuals in general relating to any question deriving from the Law, the regulations or the schedules and technical standards for whose observance the Under-Secretary's Office is responsible are settled by that body after hearing the parties.

Any penalties imposed by the Under-Secretary's Office can be appealed to the Appeals Court of Santiago or the Supreme Court.

#### Frequency allotment or assignment

4. For all the purposes of the Law, the use and enjoyment of frequencies forming part of the radio frequency spectrum is available on a free and equal basis through mainly temporary telecommunications concessions, permits and licences granted by the State.
5. Yes.

Numbering and identification codes

6. They are assigned at the request of the concession-holder and in accordance with the provisions of the technical regulations.

7. Yes.

Standards, type approval and equipment attachment

8. There are technical standards for public and intermediate services, and type approval and technical characteristics standards for limited services.

9. When the Under-Secretary's Office is amending a standard or developing a new one, it consults the interested parties who may submit their comments before the standard is adopted.

The private sector may formally propose amendments to the regulations in force. No formal mechanism has been established for concession-holders or licensees to propose standards, but if they do propose any they will be considered by the Under-Secretary's Office.

10. The equipment of domestic and foreign origin which is subject to type approval is defined in the corresponding regulations. The policy of the Under-Secretary's Office is now to reduce to a minimum both the need for type approval and the requirements, since practically no equipment is produced domestically. The Under-Secretary's Office is responsible for certification, but the work of type approval is done by service suppliers and technical institutions. There are no agreements with other governments.

Foreign produced equipment requires type approval, but the procedure takes into account the presentation of a type-approval certificate from the country of origin.

11. Any class of equipment that satisfies the technical regulations can be attached to the network. The technical regulations are based on the following criteria: that the essential characteristics of the network are not affected and that no one is injured.

12. The public network is owned by the private operators.

13. The terminal equipment market is open to competition. The user may attach his own terminal equipment to the network.

Interconnection

14. The Law makes interconnections compulsory. The relevant rules will be laid down in the general regulations of the Law and the special regulations, which have not yet been updated.

15. The Law states that suppliers of public services and carriers (intermediate services) who provide a long-distance telephone service must establish and accept interconnections, in accordance with the technical standards, procedures and time-limits specified by the Under-Secretary's Office. This obligation applies to interconnections between public telephone service networks and intermediate service networks and between the public telephone service networks of different concession-holders within the same zone and to the "dominant" intermediate service concession-holder with respect to other concession-holders of the same type.

The interconnection of supplementary services through the public networks (value-added services) by public service concession-holders or third parties is obligatory.

16. The holders of public data network concessions may use their own facilities or those of third parties. The users may employ leased circuits to obtain access to these networks.

17. The prices or maximum tariffs between concession-holders for services supplied through interconnections are set by the authority, in accordance with the procedure laid down in the Law, as a function of the costs. These prices and tariffs are published to make them generally known and the same charges are applied to all those requesting such services.

The maximum charges that the public telephone service concession-holder can apply to the holders of long distance intermediate services concessions for the interconnections that they request are set by the authority, in accordance with the procedures laid down in the Law.

#### Competitive safeguards

18. All measures relating to anti-competitive practices are the responsibility of the anti-trust bodies and are general in nature, applying to all sectors of the economy.

19. The Law obliges the carrier who provides long-distance services subject to tariff-setting (dominant carrier) to supply those services to other concession-holders of the same type on non-discriminatory terms.

Only carriers established as open corporations, which could be subsidiaries or affiliates of public service supplier enterprises, may install, operate and exploit long-distance facilities connected to the public telephone service, provide a national and international long-distance telephone service and conclude agreements with foreign correspondents.

20. There is an anti-trust Law which regulates all sectors of the economy. The General Telecommunications Act permits the transfer and assignment of concessions and licences and the granting of the right to use them, in any capacity, subject to authorization by the Under Secretary's Office, which may not be withheld without good reason. The anti-trust commissions are empowered to rule on mergers and acquisitions, if they affect free competition.

21. No.

#### Pricing-related measures

22. In general, there is a free pricing regime for services. However, in the case of the public telephone service, excluding the mobile phone system, and the switching and transmission services provided by the "carriers", the anti-trust bodies are empowered to declare them monopolies and, consequently, subject them to tariff-setting, as long as this situation continues.

The structure and level of the regulated tariffs and the indexation formulas are established by the authority for periods of five years on the basis of the costs of an efficient enterprise, the tariffs being regarded as maxima.

In the case of international communications, the accounting rates are not set by the authority; they are determined by the operators of the service themselves.

23. The Law prohibits transfers of costs or profits, by means other than the distribution of dividends, between carriers and suppliers of public services, and if the carrier is a subsidiary or affiliate of the public service supplier or if the latter owns 20 per cent or more of its capital, the penalty could be the lapse of the concession.

24. The regulated tariffs are maxima and in applying them the concession-holders may not discriminate between users in the same category; volume discounts fall within these provisions.
25. Each enterprise subject to tariff regulation is involved only in its own proceedings.
26. The structure and level of the regulated tariffs and the indexation formulas are established by the authority for periods of five years on the basis of the costs of an efficient enterprise, the tariffs being regarded as maxima.
27. No. As already mentioned, there is in general a free pricing policy, with the exceptions indicated in connection with local and long-distance telephone services supplied under conditions that are not adequate to ensure free competition.

#### Rights of way for the construction of infrastructure

28. The telecommunications facilities are private property and belong to the concession-holders or licensees. The authorizations granted empower them to build infrastructure or facilities. The suppliers of telecommunications services have the right to run overhead and underground lines along and across streets, squares, parks, highways and other national public property, provided that they observe the technical standards and regulatory requirements and the relevant (municipal) ordinances.

Where private property is involved, rights of way must be agreed between the parties.

Where public telecommunication services are concerned, if the interested parties fail to arrive at a direct agreement, in the case of private rights of way the Under-Secretary's Office may declare the service indispensable, by reasoned decision, and a legal right of way will be understood to have been established *de jure* over the private property in question. In this case, the appropriate compensation will be determined by the courts in summary proceedings.

29. Yes. No distinction is made between domestic and foreign suppliers.

#### New telecommunication services

30. If the "new" services correspond to the supplementary services or value-added services category the legal procedures and regulations are very straightforward. The installation and operation of the equipment for supplementary services does not require a concession or licence. Within 60 days of receiving a request, accompanied by the corresponding technical data, the Under-Secretary's Office will give a ruling on whether the requirements have been met (no effect on the essential technical characteristics of the public networks nor on the uses which they make technologically possible nor on the modalities of the basic service thereby supplied). If by the time this period has elapsed no ruling has been issued, it will be understood that the supplementary equipment complies with the technical regulations and the services may be introduced.

New services corresponding to other categories may require technical regulations before they can be approved.

31. The legislation and the regulations specify the general characteristics that enable the status of the services to be determined.