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Merger: Televisa - Cablemás

Federal Competition Commission authorizes a relative monopolistic practice.

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(This note does not represent VA & BA position)

1. The Federal Competition Commission (FCC) authorized a merger between Televisa and Cablemás with some remedies (References “a” and “b”, following)

2. The conditions imposed by the authority are oriented to avoid or diminish negative effects on competition by an agent who has or could have substantial power in the relevant market.

3. Televisa presumably has substantial power in certain relevant markets associated to production and distribution of “programming” in Spanish for tv broadcasting.

4. The FCC imposes certain obligations in Televisa’s programming marketing (References “c” and “d” following)

5. Among such conditions the FCC authorized the following “threshold”:

“5.- The [programming] offer described in this notice will not be available to any economic agent who directly or indirectly, operates one or more public telecommunication networks which provide services in Mexico to more than five million users [sic], and that the gross income, directly or indirectly, derived from the telecommunication services from such agent in Mexico, within the preceding year, had been larger to the equivalent in Mexican currency to one thousand and five hundred million dollars from the United States of America (US\$1,500,000.00). These limits will be accounted for in an aggregate fashion involving persons,

entities or companies that belong to the same economic interest group” (Reference “c” following).

6. The Federal Law in Economic Competition in contrast states:

Article 10. Provided assumptions referred to in articles 11, 12 and 13 from this Law are met, relative monopolistic practices are acts, contracts, agreements, procedures or combinations whose object or effect is or might be to improperly displace other agents from the market; substantially hinder their market access or establish exclusive market advantages in favor of one or several persons, in the following cases:

...

V. The unilateral action of refusing to sell, market or provide to certain persons goods or services available and normally offered to others.

...

To determine if the practices referred to in this article must be sanctioned pursuant to this Law, the Commission will analyze efficiency gains derived from the conduct as provided by the economic agents and their favorable effects on competition process and free access to markets

...

as well as those demonstrating that net contributions to consumers’ welfare derived from such practices outbalance their anticompetitive effects. (Reference “e” following).

7. Final Comments.

- i. The commercial practice authorized to Televisa falls squarely into a relative monopolistic practice (ie an exclusionary conduct.)
- ii. It is surprising that the Federal Competition Commission had authorized to Televisa the execution of a discriminatory conduct (“refusal to deal”) without valid grounds to argue that such practice will improve the competition process and free access to markets. The FCC without any justification favors certain options for “users” of public telecommunications networks below the threshold while all “users” of those public

telecommunication networks which exceed the threshold are left without the same options.

References:

- a. File CNT-18-2007:

http://www.cfc.gob.mx/images/stories/resoluciones/extractos_de_resoluciones/Concentraciones/CNT-18-2007.pdf

- b. File RA-26-2007 associated to file CNT-18-2007

http://www.cfc.gob.mx/images/stories/resoluciones/extractos_de_resoluciones/Recurso_de_reconsideracion/RA-26-2007.pdf

- c. Remedies in file RA-26-2007 associated to file CNT-18-2007

[http://www.cfc.gob.mx/images/stories/resoluciones/extractos_de_resoluciones/Recurso_de_reconsideracion/acuerdo%20cumplimiento%20ra-26-2007\(final\).pdf](http://www.cfc.gob.mx/images/stories/resoluciones/extractos_de_resoluciones/Recurso_de_reconsideracion/acuerdo%20cumplimiento%20ra-26-2007(final).pdf)

- d. Miguel Flores' personal vote in file RA-26-2007:

http://www.cfc.gob.mx/images/stories/resoluciones/extractos_de_resoluciones/Recurso_de_reconsideracion/voto%20particular%20ra-26-2007.pdf

- e. Federal Law of Economic Competition:

<http://www.cfc.gob.mx>