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PACT FOR MEXICO AND TELECOMMUNICATION REFORM IN MEXICO

*Fernando Avelar**

MANY have long hailed Mexico to be a developing economy, but the country recently became a more attractive emerging market to many foreign investors.¹ The Latin American country has shown several signs of becoming a world-competitor in the exports market, especially with the recent report by a Bank of America Merrill Lynch economist, which estimated that Mexico's wages are now about 19.6 percent lower than China's wages.² Foreign investors are likely looking at Mexico with an opportunistic outlook for future investment, especially investors from the United States, which get an added incentive via the benefits of the North American Free Trade Agreement.

But still, there remain numerous barriers that opportunistic investors are faced with when trying to invest in Mexico. Of these barriers, the most troubling for both foreign and domestic investors of Mexico are the oligopolies and monopolies that control many of the major industries in Mexico.³ The telecommunications industry in Mexico is of special interest in the modern age, and has long been controlled by a few companies, specifically the giant America Movil, whose main shareholder, Carlos Slim, also happens to be the world's richest man.⁴ Shortly after taking office, the recently elected President of Mexico, Enrique Peña Nieto, pledged to reform the telecommunications industry in Mexico to boost

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1. James McKeigue, *Why Mexico's Economy Could Be One of the Most Attractive Emerging Markets*, MONEY MORNING (July 18, 2012), <http://www.moneymorning.com.au/20120718/why-mexicos-economy-could-be-one-of-the-most-attractive-emerging-markets.html> [hereinafter McKeigue].
2. *Study: Mexican Wages Fall Below Chinese Levels*, ABC NEWS (Apr. 6, 2013), <http://abcnews.go.com/International/story?id=18893124#.UbzlNPnqNt>.
3. McKeigue, *supra* note 1.
4. Tracy Wilkinson, *Mexico Sues Billionaire Carlos Slim's Telmex Over Phone Fees*, LOS ANGELES TIMES (Apr. 3, 2013), <http://articles.latimes.com/2013/apr/03/world/la-fg-mexico-telmex-20130403> [hereinafter Wilkinson].

competition and allow regulators to break up dominant players in the industry.⁵

I. BARRIERS TO THE MARKET

The current status of the Mexican telecommunications industry poses many barriers to investment. A recent report released by the U.S. Trade Representative's Office highlighted many of the challenges that are faced by foreign investors.⁶ The part of the report that addressed Mexico mainly expressed concern over the dominant positions that Telcel and Telmex hold in the mobile and fixed phone markets, as both are controlled by the same parent company, America Movil.⁷ As of 2012, Telcel had 70 percent of the market share for mobile subscribers in Mexico, and Telmex held about 80 percent of the market share for fixed line subscribers in Mexico.⁸

According to the report, the Mexican Federal Telecommunications Commission (Cofetel) has attempted numerous times to lower long distance and mobile termination rates, but the existing suppliers of the telecommunications services have used judicial proceedings to stall these actions.⁹ The mixture of an inefficient court process as well as weak regulatory oversight by Mexican agencies in turn means that the disputes Cofetel filed involving competition in the market have been lingering for years.¹⁰

In addition to the monopolies currently in place, foreign companies are also deterred from investing in the Mexican telecommunications market because of the current laws in place that create difficulty for foreigners to invest in the industry. One of these laws is the Foreign Investment Law, which limits the foreign ownership of the wired telecom industry to 49 percent.¹¹ Foreign investors must also jump through more hoops than domestic companies if they want to invest in the telecommunications industry because Mexican law states that foreign companies are required to form joint ventures with Mexican partners in order to provide any satellite-based services in Mexico.¹²

5. Adriana Barrera & David Graham, *Mexican Consumer Protection Agency Files Suit against Telmex*, REUTERS (Mar. 31, 2013, 7:36 PM), <http://www.reuters.com/article/2013/03/31/us-mexico-telecoms-idUSBRE92U0AD20130331>.

6. Dolia Estevez, *U.S. Government Puts Pressure On Carlos Slim, Mexico's Telecom Sector To Open Up To Competition*, FORBES (Apr. 1, 2013, 5:29 PM), <http://www.forbes.com/sites/doliaestevez/2013/04/01/u-s-government-puts-pressure-on-carlos-slim-mexicos-telecom-sector-to-open-up-to-competition/>.

7. *Id.*

8. OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXEC. OFFICE OF THE PRESIDENT, 2013 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 258 (2013), available at <http://www.ustr.gov/sites/default/files/2013%20NTE.pdf> [hereinafter Marantis].

9. *Id.*

10. *See id.*

11. *Id.*

12. *Id.*

II. PACT FOR MEXICO

A. THE SIGNATORIES

The Pact for Mexico (Pact) is a very important agreement between the three main political parties of Mexico, which is the platform on which many of the reforms planned for Mexico, including the telecommunications reform, are and will be based on.¹³ The agreement was signed on December 2, 2012, Mexican President Peña Nieto's first full day in office.¹⁴ The Pact was signed by President Nieto and the three presidents of each major political party in Mexico: Interim President Cristina Diaz Salazar of the Institutional Revolutionary Party (PRI), President Gustavo Madero for the National Action Party (PAN), and President Jesus Zambrano for the Party of the Democratic Revolution (PRD).¹⁵ In attendance at the signing ceremony of the Pact were the governors of Mexico's thirty-one states, the head of Mexico City's government, and the presidents of both the upper and lower houses of Congress.¹⁶ The Pact has support from all segments of the government and also is tri-partisan with respect to the major political parties of Mexico, thus giving it a very firm mandate to accomplish the goals it sets out for the future of Mexico.¹⁷

B. GOALS OF THE PACT

The Pact contains ninety-five different initiatives that can be listed under five categories: democratic governance; transparency, accountability, and combating corruption; rights and liberties; security and justice; and economic growth, employment, and competitiveness.¹⁸ The system used to implement these initiatives is via a governing council that develops smaller committees to write laws submitted to Mexico's Congress.¹⁹ The council is composed of representatives from the PAN, PRI, PRD, and President Peña Nieto's cabinet.²⁰

The Pact aims to address several reforms including education reform, energy reform, and telecommunications reform, all of which must be accomplished by the second semester of 2018.²¹ So far the telecommunications reform has picked up a lot of steam with not only Congress working aggressively towards reform,²² but also other parts of government, such

13. *With a Little Help From my Friends*, THE ECONOMIST (Dec. 8, 2012), <http://www.economist.com/news/americas/21567941-new-president-believes-he-has-broad-political-agreement-change-his-country>.

14. *See id.*

15. Andres Sada, *Explainer: What is the Pacto por Mexico?*, AMERICAS SOCIETY/COUNCIL OF THE AMERICAS (Mar. 11, 2013), <http://www.as-coa.org/articles/explainer-what-pacto-por-m%C3%A9xico>.

16. *Id.*

17. *See id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. David Graham & Miguel Gutierrez, *UPDATE 2—Mexico Lower House Gives Final Approval for Telecoms Bill*, REUTERS (Mar. 22, 2013, 6:32 AM), <http://www>.

as the federal consumer protection agency (Profeco), acting to try and open up the telecommunications arena to more competition.²³ The Pact also envisions a large growth of close to 6 percent in the Mexican economy if the reforms outlined in the Pact are approved.²⁴

III. LEGISLATION IN CONGRESS

A. CONTENTS OF THE BILL

On March 11, 2013, Mexican lawmakers from the three political parties introduced a major telecommunications bill.²⁵ The primary goals of the bill are to increase competition in the telecommunications industry of Mexico and give regulators the power to break up dominant monopoly-type players in the market.²⁶

The bill will create a new independent regulatory body that will be called the Federal Telecommunications Institute.²⁷ This new regulatory body will have the power to break up dominant firms in industries where those firms control more than 50 percent of their respective markets.²⁸ This power applies not only to the telecommunications market, but also the broadcasting industry,²⁹ which is also dominantly controlled by a few companies.³⁰ The body will also be given “the power to grant and revoke broadcast and telecommunications concessions.”³¹

The reform bill also addresses the cap on foreign investment. The bill will remove the 49 percent cap that is currently in place for foreign investors who want to invest in the fixed-line phone industry in Mexico.³² Currently, America Movil has dominant control over the network used in fixed and wireless telephone lines, thus creating a conflict of interest when new competitors try and enter the market and use those same lines to provide service.³³ In February of 2013, Telmex was fined by the Federal Competition Commission in the amount of \$52 million for refusing to

reuters.com/article/2013/03/22/mexico-telecoms-vote-idUSL1N0CE0ZK20130322 [hereinafter Graham & Gutierrez].

23. Wilkinson, *supra* note 4.

24. Ben Bain, *Mexico's Peso Rises as Senate Poised to Vote on Telecom Reforms*, BLOOMBERG (Apr. 10, 2013, 9:31 AM), <http://www.bloomberg.com/news/2013-04-10/mexico-s-peso-rises-as-senate-poised-to-vote-on-telecom-reforms.html> [hereinafter Bain].

25. Graham & Gutierrez, *supra* note 22.

26. *Id.*

27. Juan Montes, *Mexico Telecoms Reform Bill Advances*, WALL ST. J. (Mar. 22, 2013, 6:52 AM), <http://online.wsj.com/article/SB10001424127887324373204578375542294095614.html?cb=logged0.18636047588718463> [hereinafter Montes].

28. *Id.*

29. Nacha Cattan & Crayton Harrison, *Slim May Face New Competitors in Mexico Telecom Reform Law*, BLOOMBERG (Mar. 11, 2013, 9:15 AM), <http://www.bloomberg.com/news/2013-03-10/slim-may-face-new-competitors-as-mexico-weighs-telecom-overhaul.html>.

30. Marantis, *supra* note 8.

31. Montes, *supra* note 27.

32. *Id.*

33. *See id.*

give a rival competitor access to its landlines.³⁴ The new bill aims to address some of these concerns by creating a state-owned “carrier of carriers” telecom network.³⁵ This new network would allow new rival entrants to the market to completely bypass America Movil’s existing network and have a more seamless and easier process for entering the industry.³⁶

The telecommunications bill also addresses some of the issues of dominant players in the broadcasting industry. The bill contains a contingent provision, pending review by a foreign investment commission, which would allow foreign investors to gain up to 49 percent ownership of both TV and radio broadcasters.³⁷

B. FUTURE OF THE BILL

On March 21, 2013, the lower house voted on the bill³⁸ and the bill passed by a strong vote of 414 in favor, with only fifty opposing and eight abstentions.³⁹ Lawmakers representing different political parties have also backed the bill. Lawmakers from the current ruling party, the PRI, said they were confident that the bill would pass Congress.⁴⁰ An opposing senator was also reported to agree to back portions of the proposal, including creating the new regulatory body, thus giving more confidence that the bill would pass.⁴¹

The optimism for the passing of this large telecommunications reform has already started affecting Mexico’s currency. As speculation rose that Mexican lawmakers were close to approving the bill, so did the value of the Mexican peso, which was at a twenty-month high on April 10, 2013.⁴²

IV. MEXICO’S MESSAGE TO AMERICA MOVIL AND CARLOS SLIM

With all of this movement within the Mexican government on telecommunications reform, some of the dominant players in the telecommunications industry have started to feel the effects.

Recently, the Mexican government filed a barrage of lawsuits against America Movil’s subsidiaries, Telcel and Telmex.⁴³ As stated previously, America Movil is a conglomerate holding company, which is owned primarily by Carlos Slim.⁴⁴

34. *Mexico Fines Slim’s Telmex For A Whopping \$52 Million*, HUFFINGTON POST (Feb. 7, 2013, 5:54 PM), http://www.huffingtonpost.com/2013/02/07/mexico-fines-slims-telmex_n_2641238.html?

35. Montes, *supra* note 27.

36. *Id.*

37. Graham & Gutierrez, *supra* note 22.

38. *See* Montes, *supra* note 27.

39. Graham & Gutierrez, *supra* note 22.

40. *Id.*

41. Bain, *supra* note 24.

42. *Id.*

43. Wilkinson, *supra* note 4.

44. *Id.*

One of the lawsuits involves the fixed-line industry, in which Telmex has 80 percent control of the market.⁴⁵ Profeco filed suit in civil court in order to attempt to recover money on behalf of millions of telephone users.⁴⁶ This suit is taking advantage of a law that was put into place in 2012, which basically allows for the equivalent of a class-action suit in the United States, the only difference being that the right to the cause of action is given to a government agency rather than a group of citizens.⁴⁷ At the core of the suit is the issue that Telmex has been illegally charging a fee to all fixed-line subscribers who opted to keep their names out of a public directory.⁴⁸ According to Profeco, the fees that were being charged to the subscribers were unconstitutional because the Mexican Constitution guarantees the right to privacy, therefore the option to keep your name out of the public directory should be free.⁴⁹

The other action involves the wireless service provider, Telcel. Profeco filed suit against Telcel in February 2013.⁵⁰ The Telcel suit was filed on the basis that Telcel has failed to reimburse subscribers for a series of service outages that occurred.⁵¹

V. CONCLUSION

With the recent election of President Peña Nieto, there seems to be a big movement in the Mexican government in an effort to give Mexico a big economic push. This economic push includes the introduction of many new reforms to several different areas of the Mexican economy, with telecommunications being one of the more significant areas of reform because of its dominant control by the Conglomerate America Movil. President Peña Nieto has used the Pact as a foundation to set up a mandate for all of these reforms and thus far has done so successfully with the tri-partisan help of the major political parties in Mexico. Mexico is currently primed for a big renovation that will likely result in an improved economic climate.

45. *Id.*

46. *Id.*

47. *See id.*

48. Dolia Estevez, *Mexican Billionaire Carlos Slim's Three Strikes and One Victory In One Week*, FORBES (Apr. 4, 2013, 4:45 PM), <http://www.forbes.com/sites/dolia-estevez/2013/04/04/mexican-billionaire-carlos-slimes-three-strikes-and-one-victory-in-one-week/>.

49. *Id.*

50. Wilkinson, *supra* note 4.

51. *Id.*