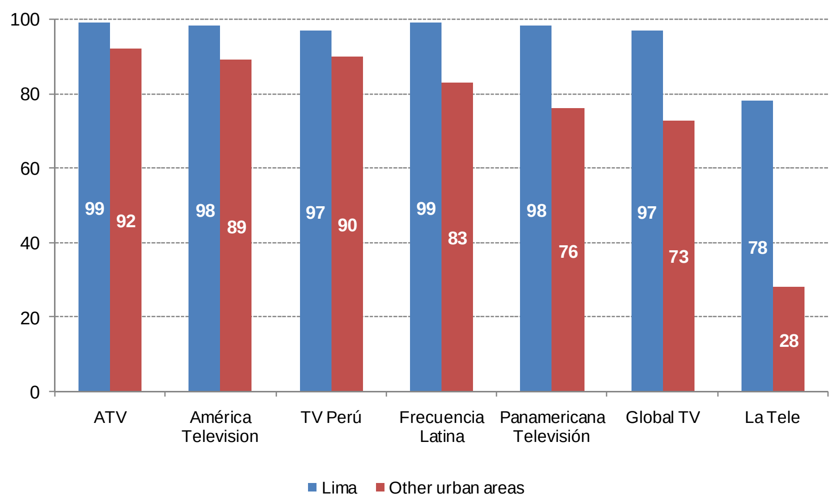
GLOBAL FORUM ON COMPETITION – 2013

COMPETITION ISSUES IN TELEVISION AND BROADCASTING
Contribution from Peru

1. What is the state of competition in the television broadcasting sector in your jurisdiction?

In the case of Peru, consumers can choose among national networks and pay television. There are seven **national networks**, whose coverage varies depending on the geographic zone. There is a higher coverage in Lima -the capital city- than in the rest of the country (see Graph 1).

Graph 1
PERU: COVERAGE[1/] OF NATIONAL NETWORKS, 2011
(%)

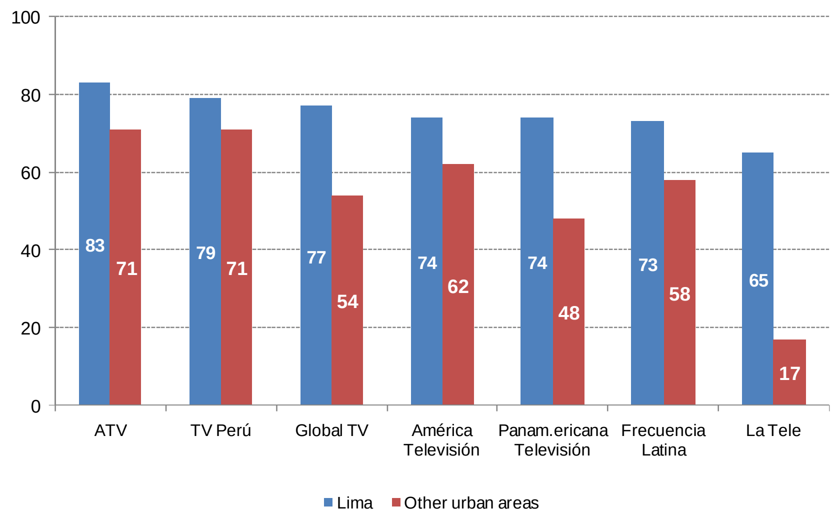


1/ Percentage of homes which receive the signal of the network.
Source: COMPAÑÍA PERUANA DE ESTUDIOS DE MERCADO Y OPINIÓN PÚBLICA – CPI (2012). *Cobertura y calidad de imagen de canales de Televisión a nivel nacional urbano.* Market Report Nº 4, 2012. Available in: www.cpi.com.pe/boletin/impreso/archivos/MR201204-01.pdf

Quality of the signal usually depends on the network and the geographic area in which the consumer is located. For instance, in Lima the percentage of homes with a good reception is 83% in the case of ATV and 73% in the case of Frecuencia Latina; however, in other urban areas these percentages drop to 71% and 58%, respectively (see Graph 2).

Graph 2

PERU: PERCENTAGE OF HOMES WITH GOOD RECEPTION OF NATIONAL NETWORKS



Source: COMPAÑÍA PERUANA DE ESTUDIOS DE MERCADO Y OPINIÓN PÚBLICA – CPI (2012). *Cobertura y calidad de imagen de canales de Televisión a nivel nacional urbano*. Market Report Nº 4, 2012. Available in: www.cpi.com.pe/boletin/impreso/archivos/MR201204-01.pdf

Regarding **pay television**, it should be mentioned that according to Supreme Decree Nº 020-2007-MTC[1], broadcasting services by cable can be provided in three modes: wired or optical cable, multichannel multipoint distribution system (MMDS) and direct broadcast by satellite.[2] Of these three, the most used among concessionaires in Peru is broadcasting by wired or optical cable, because of its lower costs.[3]

Pay television is provided in all the country, however, the number of firms and subscribers varies depending on the geographic area under consideration. For instance, by September 2012 there were 1 196 815 subscribers in the country (36,50% of which are in the department of Lima) and 32 firms with active subscribers.[4]

It is important to mention that this market is characterized by the presence of one firm with a significant participation nationwide. In fact, Telefónica del Perú S.A.A., which is related to the firm that holds the concession of the fixed telephone service, concentrates 35,13% of subscribers in the country and 65,08% of subscribers in Lima.

With respect to **sector specific regulation**, it should be mentioned that according to Law 28278[5], broadcasting services cannot be monopolized, directly or indirectly by the State

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[1] General Regulations of the Telecommunications Law, given on 3rd July, 2007.

[2] Article 94.

[3] Organismo Supervisor de la Inversión Privada en Telecomunicaciones - Osiptel (2009). *Informe que evalúa competencia en el mercado de distribución de radiodifusión por cable en Lima Metropolitana y Callao*. Report Nº 007-GRE/2009. Available in: http://www.osiptel.gob.pe/WebSiteAjax/WebFormGeneral/informacion_empresas/wfrm_Consulta_Informacion.aspx?INFCODIGO=2094&SCATCODIGO=316&TituloInformacion=Seguimiento%20de%20mercados%20y%20detecci%c3%b3n%20de%20pr%c3%a1cticas%20anticompetitivas

[4] Other departments with a high number of subscribers are Arequipa (4,45%), La Libertad (2,85%), Piura (2,23%), Lambayeque (2,20%) and Cusco (2,15%). Source: Osiptel.

[5] Law on Radio and Television, given on 23rd June, 2004.

or by individuals. According to the above mentioned law, monopolization is interpreted as one person or firm owning more than 30% of the technically available frequencies, whether they are assigned or not, in the same frequency band within the same locality.

Law 28278 also states that access to broadcasting services is governed by principles of free competition, freedom of access, transparency, efficient use of spectrum and technological neutrality.[6] Furthermore, broadcasting services are provided according to what is established in the National Plan of Frequency Allocation, relevant technical standards and international treaties and agreements. In order to operate, firms must also apply for a license with the Ministry of Transport and Communications; this license lasts for 10 years and is renewed automatically, provided that all requirements set by law are fulfilled. Only people with Peruvian nationality or firms that are constituted and located in Peru can apply for a broadcasting license.

2. What do you consider to be the most significant current and future challenges for competition policy in television broadcasting?

According to a study of the Peruvian telecommunications regulator, Osiptel, **legal and structural barriers** can be identified in the pay television sector which, as stated before, is mainly provided by cable. [7] With respect to legal barriers, Osiptel found that in order for a firm to operate, it must have a distribution network that allows it to transmit its signal to subscribed homes. However, in some districts air cables are prohibited and this constitutes a significant legal barrier which may prevent the implementation of a network in the short run.

Structural barriers are associated with the existence of scale and density economies in the provision of cable television. The presence of scale economies implies a decrease in the average cost of the provision of the service when the number of subscribers is increased. This happens because there are important fixed costs associated to the lay-out of the cable network, the purchase of signal transmission rights and the acquisition of specialized equipment.

The presence of density economies is associated with the reduction of the distribution costs when the number of subscribers in a determined geographic area increases. In the case of Lima, Osiptel identifies a difference between two kinds of firms: the ones operating in the entire city and the ones operating only in certain districts. Density economies are probably more significant for the firms operating in the entire city, since the required investment in infrastructure is higher, which may constitute a barrier to entry.

The existence of **exclusive content rights** may also constitute a challenge for competition policy in the sector. In the case of Peru, Telefónica del Perú S.A.A.[8] has exclusive rights for the transmission of Media Networks Perú S.A.C. (both firms belong to the same economic group), so two phases in the television production chain (broadcasting and distribution of signal) are integrated. Osiptel (2009) analyzed whether this integration may constitute an effective advantage with respect to other competitors who cannot access the contents produced by Media Networks Perú S.A.C. and found that it depends on consumer preferences, related to their relative incomes and other socio economic considerations. The regulator found that people with higher income have

[6] Article 1.
[7] Osiptel (2009). Op. cit.
[8] Formerly, Telefónica Multimedia S.A.C.

a higher valuation for channels produced by Media Networks Perú S.A.C.[9] which may be reflected in a lower elasticity to changes in prices. This, in turn, may contribute to the market power of the firm in this group.

We should also mention the studies prepared by the Peruvian telecommunications regulator, Osiptel, about competition in the cable broadcasting sector. In a 2008 study regarding product differentiation in the market of television by cable, Osiptel found evidence of the existence of an inverse relationship between market concentration and supply indicators in the sector. This is derived from the presence of higher prices and fewer channels in markets with a lower number of cable operators.[10]

Furthermore, in a report from 2009, Osiptel analyzes the competition conditions in the market for broadcasting distribution by cable in Lima. Some of the main conclusions of this study have been commented above, but we should add that this document also presents legal aspects of the sector and relevant information about the main operating firms.[11]

3. What has been your relevant experience in competition law enforcement relating to television and broadcasting?

According to Peruvian legislation, Osiptel is in charge of the control of anticompetitive practices in the case of public telecommunication services, including telephony and pay television.[12]

Nonetheless, there has been a case which was analyzed by both agencies with different results. In 1999, a local cable company, Tele Cable S.A. (Tele Cable), filed a complaint against Telefónica Multimedia S.A.C. (TM)[13] and two cable content developers, Fox Latin American Channel Inc. (Fox) and Turner Broadcasting System Latin America Inc. (Turner) because of the celebration of exclusivity arrangements for the transmission of contents. Indecopi analyzed the complaint of Tele Cable against Fox and Turner, while Osiptel analyzed the complaint of Tele Cable against TM:

- According to the analysis of Indecopi, Fox and Turner did not have a dominant position in the relevant markets. Furthermore, even if they had a dominant position, Fox and Turner had reasonable justification for not wanting to sign an agreement with Tele Cable and there was no evidence that the lack of agreement among the parties was the main reason for the decrease in the number of customers of Tele Cable. Therefore, the complaint was dismissed.[14]
- According to the analysis of Osiptel, TM had a dominant position in the relevant markets. Additionally, Osiptel found no evidence that the exclusivity agreements celebrated with Fox and Turner had positive effects on the welfare of consumers. On the contrary, Osiptel considered that the agreements had negative effects on

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[9] Media Networks Perú S.A.C. produces three channels: Plus TV, Canal N and CMD.

[10] Osiptel (2008). *Diferenciación de producto en el mercado de radiodifusión por cable*. Working paper Nº 001-2008. Available in: http://www.osiptel.gob.pe/WebSiteAjax/WebFormGeneral/informacion_empresas/wfrm_Consulta_Informacion.aspx?INFCODIGO=14174&SCATCODIGO=316&TituloInformacion=Documentos%20de%20Trabajo

[11] Osiptel (2009). Op. cit.

[12] Law 27336, given on 16th July, 2000.

[13] Today, Telefónica del Perú S.A.A.

[14] Resolution Nº 005-2003-INDECOPI/CLC, given on 14th May, 2003. Available in: http://aplicaciones.indecopi.gob.pe/ArchivosPortal/publicaciones/5/2003/1-99/7/9/Resol005-2003.pdf

competitors (such as Tele Cable) and raised entry barriers into the pay television market. Consequently, Osiptel ordered the annulment of the exclusivity agreements.[15]

Finally, we should mention that in the last ten years the Defense of Free Competition Commission of Indecopi has only dealt with two cases involving alleged anticompetitive practices relating to television and broadcasting:

- In first one, Televisión Nacional Peruana S.A.C. (TNP) filed a complaint against TM for an alleged abuse of a dominant position in the form of unjustified refusal of treatment and application of dissimilar conditions to equivalent services because TM refused to include in its package of channels a signal transmitted by TNP through UHF channel 23. According to the analysis of the Commission, there were no reasonable grounds to affirm that TM had a dominant position in the relevant market. Furthermore, the Commission argued that there are sufficient grounds to justify the refusal of TM since it is a lawful and reasonable behavior from an economic point of view. Therefore, the complaint was dismissed.[16]

- In the second case, Asociación Cultural Bethel (Bethel) filed a complaint against TM for allegedly abusing its dominant position when it refused to include in its package of channels a signal transmitted by Bethel through UHF channel 25. The Commission considered that TM did not have a dominant position in the relevant market and, therefore, the sanctioning administrative procedure was not initiated.[17]

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[15] Resolution Nº 062-CCO-2000, given on 21st December, 2000 (available in: http://www.osiptel.gob.pe/WebSiteAjax/WebFormGeneral/informacion_empresas/wfrm_solucion_controversia.aspx).

[16] Resolution Nº 073-2004-INDECOPI/CLC, given on 17th November, 2004 (available in: http://aplicaciones.indecopi.gob.pe/ArchivosPortal/publicaciones/5/2004/1-219/7/9/Res073-2004.pdf).

[17] Resolution Nº 047-2007-INDECOPI/CLC, given on 10th August, 2007 (available in: http://aplicaciones.indecopi.gob.pe/ArchivosPortal/publicaciones/5/2007/1-751/7/9/Res047-2007.pdf) and Resolution Nº 053-2007-INDECOPI/CLC, given on 21st September, 2007 (available in: http://aplicaciones.indecopi.gob.pe/ArchivosPortal/publicaciones/5/2007/1-849/7/9/Res053-2007.pdf).