3-24-2004

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World Trade Organization Rules Against TELMEX Interconnection Fees

by LADB Staff
Category/Department: Mexico
Published: 2004-03-24

The World Trade Organization (WTO) dealt a setback to the Mexican government and the giant telecommunications company TELMEX, ruling that US long-distance companies have been forced to pay excessive interconnection fees to operate in Mexico during the past several years. The WTO decision was reached in mid-March but was kept confidential pending its publication on April 2. Details of the ruling were made public by US officials. "Mexico has provided a single, dominant company with a government mandate to set excessive rates for international calls to Mexico," said US Trade Representative Robert Zoellick. "Today's decision is an important victory for American consumers and for the telecommunications industry."

The ruling stems from a formal complaint filed by US authorities before the WTO in 2000 (see SourceMex, 2002-02-20). Mexico and the US, however, have been engaged in bitter disputes over telecommunications fees since at least 1998 (see SourceMex, 1998-03-04). In 2000, former US President Bill Clinton took the first steps to bring the matter before the WTO (see SourceMex, 2000-04-12 and 2000-08-02). Mexico responded by blocking a US effort to have the WTO convene a dispute-resolution panel (see SourceMex, 2000-12-20).

TELMEX temporarily averted a messy legal battle by reaching an agreement with competitors (see SourceMex, 2001-01-10), but that agreement later unraveled. The WTO decision is a victory for US telecommunications companies that claim that TELMEX has overcharged them by about US$1 billion since 2000. "Successful implementation of this decision will lead to lower costs for American and Mexican families with family and friends across the border and eliminate unnecessary costs for businesses and telecommunications providers," Zoellick said.

Mexican expatriates residing in the US stand to benefit from the lower rates, since the majority of the calls between the two countries originate north of the border. At least 10 million Mexicans reside in the US. US telecommunications officials said the WTO ruling could help their companies gain more favorable treatment in other countries. "This decision will also set a strong and helpful precedent," said Len Cali, a vice president at US giant telecommunications company AT&T.

AT&T operates in Mexico through its Alestra subsidiary, a joint venture with Grupo Alfa and Grupo Financiero Bancomer (GFB). Mexico may file appeal The Mexican government is considering the possibility of filing an appeal on the WTO ruling during the 60-day period following its formal publication. A second option for Mexico is to take advantage of a provision in the WTO ruling that allows authorities to file an injunction against bypass calls originating in the US. This practice allows phone carriers to sell excess capacity to third parties, which then transmit calls on the lines without paying termination fees.

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Mexican officials contend that bypass connections represent 20% of the roughly 6 billion minutes of long-distance calls coming into the country from the US each year. "It's equivalent to the US wanting to legalize bootlegged compact discs," said Ricardo Ramirez, director of legal affairs at the Secretaria de Economia (SE). Ramirez said Mexico would also make the case that US carriers may be padding their rates because fees to connect calls to Mexican phone lines have come down drastically in recent years. TELMEX officials say the company has lost about US$400 million per year in potential revenue because of the bypass calls. The telecommunications giant earned more than US$2 billion in net profit last year on sales of US$10.6 billion.

**TELMEX acquires share in Brazil's Embratel**

While TELMEX faces the prospect of losing some of its revenues in the domestic market because of the WTO ruling, the telecommunications giant continues to expand its reach in other lucrative markets. In mid-March, TELMEX reached an agreement to acquire a 51% share in Brazil's telephone company Embratel Participacoes from US-based MCI for US$360 million. Surprisingly, the announcement of the sale did not initially attract major objections from the Brazilian government.

In January, some members of Brazilian President Luiz Inacio Lula da Silva's Cabinet had gone on record as opposing the sale of Embratel because of its strategic nature to Brazil. The transaction could still face opposition when it comes before Brazilian telecommunications regulators later this year.

Some of Embratel's minority stockholders and a rival consortium that lost the bid to acquire Embratel said they would file protests with Brazilian and US regulators in an attempt to block the sale. US regulators are involved because the transaction involves the US company MCI. The rival consortium comprising Brazilian telephone companies Telemar, Brasil Telecom Participacoes, and the Brazilian subsidiary of Spain's Telefonica is considering filing a challenge with the US court overseeing MCI's bankruptcy case. The consortium contends its offer of US$550 million for Embratel was rejected even though it was about US$190 million above the TELMEX bid of US$360 million.

In addition to bringing the complaint to regulators, attorneys for the consortium said they were planning to inform the MCI creditors' committee that a higher bid was declined. MCI officials initially declined to comment on the matter, but later issued a statement defending the decision to sell to TELMEX. "MCI approved the TELMEX offer based on the most current information available at the time of evaluation," the statement said. "The TELMEX bid was assessed by factors including valuation, likelihood of regulatory approval, and anticipated time to close. MCI continues to act in the best interests of its creditors." The sale has already been approved by MCI's administrative council and the company's debtors' committee.

Arturo Elias Ayub, TELMEX's director of strategic alliances, communication, and institutional relations, said the Mexican telecommunications company was planning to pay for the MCI share of Embratel "in cash." He said TELMEX would be able to complete its takeover of Embratel three months after the sale is approved by US and Brazilian regulators. The TELMEX acquisition of MCI's share in Embratel was announced only five months after the Mexican telecommunications giant completed the purchase of AT&T's Latin American subsidiary. TELMEX outbid Embratel and Telefonica de Espana to acquire AT&T Latin American Corp. (see SourceMex, 2003-11-05). TELMEX,
which assumed full control of the former AT&T subsidiary on Feb. 25, said it plans to invest US$50 million to expand the network and link Mexico with Argentina, Brazil, Colombia, Chile, and Peru. It was not clear how TELMEX would integrate newly acquired Embratel properties with the former AT&T property.

TELMEX's drive to acquire properties does not stop in South America. In late March, company chairman Carlos Slim Helu announced that he and his family had accumulated a 9.1% share of the common stock of Global Crossing, a US fiber optics network. "We believe their investment shows confidence in our future," Global Crossing said in a statement. The Mexican company, which has been criticized for not doing enough to modernize operations in Mexico, in late March announced plans to invest US$183.7 million to expand lines and infrastructure in six southeastern states. Under the project, the company plans to install more than 260,000 new telephone lines in the states of Oaxaca, Tabasco, Chiapas, Campeche, Yucatan, and Quintana Roo. "This is an increase of 57% over last year in expenditures in southeastern Mexico," said TELMEX regional director Manuel Vera Garcia. (Sources: Milenio Diario, 01/16/04, 02/26/04; Spanish news service EFE, Notimex, 03/15/04; El Universal, 03/09/04, 03/15/04, 03/16/04; Associated Press, 03/12/04, 03/16/04; La Cronica de Hoy, 03/15/04, 03/16/04; La Jornada, Dow Jones news service, El Financiero, 03/16/04; El Sol de Mexico, 03/16/04, 03/17/04; Reuters, 03/12/04, 03/15/04, 03/22/04; The Herald-Mexico City, El Independiente, 03/15/04, 03/16/04, 03/23/04; Agencia de noticias Proceso, 03/23/04)

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