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Cell phone Company Owned by Billionaire Carlos Slim Apparently Beats Huge Fine Levied by Anti-Monopoly Commission

by Carlos Navarro

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Billionaire Carlos Slim and his cellular-telephone company América Móvil appear to have scored a significant victory against the government's anti-monopoly agency (Comisión Federal de Competencia, CFC) and President Felipe Calderón's administration. In a decision handed down in August, a committee of the high court (Suprema Corte de Justicia de la Nación, SCJN) ruled that the CFC will have to reconsider the US\$1 billion fine levied against Telcel and its parent América Móvil in April of this year.

The decision by the SCJN committee (Segunda Sala) is a setback for the Calderón government, which has made a strong effort to use Slim's companies as an example of the types of monopolies that Mexico should shun.

This is not the first time that TELMEX has won a legal battle against the CFC. The anti-monopoly agency ruled against the telephone giant in 1997 ([SourceMex, Dec. 17, 1997](#)) and in 2004, both times finding that its strong dominance of the market suppressed competition. And in both cases, the courts overruled the CFC decisions.

The battle between TELMEX and anti-monopoly regulators should continue for the foreseeable future as regulators seek to create more completion while Slim seeks to hold on to his companies' market shares. TELMEX controls about 78% of the country's landlines, while América Móvil has 70% of the cellular-telephone market.

In its April decision, the CFC ruled that Telcel had engaged in anticompetitive practices by charging fees to rivals to connect calls. Telcel's closest competitors are Iusacell (owned by TV Azteca) and Nextel (a subsidiary of Televisa). Slim contends that the ability of the leading television companies to offer telephone service puts him at a competitive disadvantage because he is unable to offer television service ([SourceMex, March 2, 2011](#)). The two television networks are able to offer a combination of telephone, Internet, and cable-television services through a package called triple play ([SourceMex, Aug. 16, 2006](#)), while Slim's companies are able to offer only telephone and Internet services.

CFC to review fine at September session

The CFC is scheduled to revisit its April ruling during a session in September. At that time, the CFC will have the option of reducing the fine levied against Telcel and América Móvil.

The TELMEX challenges to the CFC made their way to the SCJN, which passed the case on to the Segunda Sala, comprising Justices Sergio Salvador Aguirre Anguiano, Margarita Beatriz Luna Ramos, José Fernando Franco González Salas, Luis María Aguilar Morales, and Sergio Armando Valls Hernández. The court made no official pronouncement but various newspaper accounts said

the justices accepted arguments from Telcel and TELMEX that the CFC might have overstepped its authority by levying such a large fine.

América Móvil argued that the CFC erred in its April decision when it applied a rule intended to punish repeat offenders. The cellular company argued that the violations it is alleged to have committed are different from earlier infractions.

Jorge Fernando Negrete, director of Mexico-City based Mediatelecom Consulting, said the CFC's decision was developed at Los Pinos presidential palace and that commission chair Eduardo Perez Motta was taking direction from the Calderón government in moving against Slim's telephone companies. "From the beginning, this decision was thought of as a media ploy," Negrete said in a phone interview. "Perez Motta was trying to send a message from the executive branch."

The CFC's decision in April was actually a 2-2 tie because one of the five commissioners, Agustin Navarro Gergely, recused himself in that vote because of family ties to the phone industry. But Perez Motta, who voted in favor of the fine, broke the tie because his vote counts twice in case of a deadlock.

Despite the adverse ruling from the SCJN committee, Perez Motta cast a positive spin on the situation. In a radio interview in late August, the CFC chair said the ruling does not invalidate the results of the investigations, and the court's decision provides clarity and offers guidance to regulators on how these types of cases should be addressed.

Perez Motta has since been forced to recuse himself from any future vote because of complaints that the CFC chair made comments to the media that were biased against América Móvil. This means that only three commissioners will vote when the CFC revisits the case in September. Two of those commissioners—Luis Alberto Ibarra Pardo and Miguel Flores Bernes—voted against the fine levied in April.

Some analysts raised the possibility that the fine could be withdrawn altogether, which they said would not be a good turn of events for end users. "Things are leaning toward a vote against the fine," said Alejandro Calvillo, president of the nonprofit organization Poder del Consumidor. "If things keep going this direction, an awful precedent is going to be set."

Even as Slim was battling the CFC, the billionaire was involved in two transactions that would expand his assets in the US. In late August, Slim announced an increase in his shares of The New York Times and the New York-based retailer Saks. Through his fund Inmoviliaria Carso, Slim paid US\$8.8 million to acquire 621,000 share of Saks and 553,000 shares of The New York Times. Slim, one of the world's wealthiest individuals, first became a shareholder in The New York Times in 2009 ([SourceMex, Feb. 4, 2009](#)).

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