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LETTER FROM THE AMERICAS - Get a grip, Pedro

 Lawrence J Spiwak.
 01 February 2004

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Brazil has just named Pedro Ziller as the new president of Anatel, the national telecoms regulatory body.

Unfortunately, rather than getting his feet wet with basic telecoms issues, such as resolving interconnection disputes or resolving international ownership issues (see TTM, January 2004, p.20), Mr Ziller's major challenge will be to preserve the competitive structure of the sector itself from a coordinated assault by the local incumbent monopolies.

About 10 years ago, Brazil decided to privatise the nationally-owned operator, Telebras. Given Brazil's developing economy, the liberalisation process was supposed to be guided by the twin pillars of competition and "universalisation" - that is, access to basic telecoms service plus a build-out of advanced broadband infrastructure throughout the country.

Brazil opted to start with a state-sanctioned duopoly system to help firms recover the huge sunk costs required to upgrade virtually non-existent legacy equipment, with the promise of opening up the market once competition took hold. This divided Telebras into three local monopolists: Telefonica, Brasil Telecom and Telemar, and a long distance incumbent, Embratel. This act also established "mirror" operators for measured competition in the market: Vesper for Telefonica and Telemar; GVT for Brasil Telecom; and Intelig for Embratel.

However, as universalisation is first among equals of the twin pillars, the Government also imposed significant build-out requirements on all of the players, including the wireless operators - but that's another story.

These had to be met in a relatively expeditious time frame. As these were the boom years of the 1990s, many of these players had no reservations about going into significant debt to meet their universalisation requirements.

The problem arose, like everywhere else, when the bubble burst. Companies like GVT, Vesper, Embratel and Intelig teetered on the verge of insolvency and became vulnerable to takeovers.

Although Brazil's market was officially opened to competition on 1 January 2002, the government also decided to impose these onerous build-out requirements on new entrants as a prerequisite to legally protected interconnection rights and access to the national numbering plan. As a result, rather than spur new investment, the Brazilian government has de facto kept a duopoly in full force - each region has its own incumbent operator, plus a mirror, but otherwise no significant competitor has entered the market.

Embratel's purchase of Vesper last fall means there are only six wireline players left in the entire market.

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What is threatening this fragile balance is that the three local incumbents have formed a "consortium" to purchase Embratel. If that fails, Intelig will do.

The inevitable result will be the recreation of the Telebras system, albeit on a privately-held basis. Should the government allow such an anticompetitive event to succeed, then it will violate both the letter and the spirit of the Brazilian telecoms law, which is replete with prohibitions against undue economic concentrations in the market. Indeed, allowing the industry to reconcentrate on the hope that one incumbent would actually consider competing in another incumbent's territory when it is far easier to protect their own monopoly - particularly since Brazil's incumbents have formed a naked cartel to dominate the long distance market - is a fool's errand.

Allowing the re-creation of the old Telebras system will do nothing to stimulate the government's goal of promoting foreign investment into new competitive enterprises. It is bad enough that Brazil imposes a huge tax anytime someone wants to bring new technology into the country. But reversing whatever small pro-competitive gains that were achieved over the last ten years will send the capital markets running elsewhere.

An anticompetitive re-concentration of the market may also raise significant WTO problems for Brazil. Brazil gave one of the worst offers to the 1997 WTO Basic Telecoms Accord. Essentially, the country agreed to none of the principles outlined in the regulatory reference paper. Brazil did promise to make a revised offer one year after it passed its telecoms law, but seven years later, we are still waiting.

In sum, Brazil's incumbents have arrogantly thrown down the gauntlet to see how seriously the Brazilian government intends to enforce the law and protect competition. Let's hope Anatel and Brazil's competition authority CADE do the right thing for Brazilian consumers and stop this train wreck before it is too late.

- Lawrence J. Spiwak, president of the Phoenix Center for Advanced Legal and Economic Public Policy Studies, a think tank based in Washington D.C.

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