

Chilean court rejects Movistar abuse claim

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A court in Chile has cleared telecommunications company Movistar, a Telefónica subsidiary, of breaching the country's competition rules, after throwing out an abuse of dominance complaint.

The Tribunal for the Defence of Free Competition ruled earlier this month that Movistar had not breached competition law by restricting certain fixed line service plans which it supplied to Constetel, a telecoms company that operates in the mobile business services market.

Constetel filed a complaint against Movistar in October 2014, alleging that the Telefónica subsidiary had abused its dominant position by unilaterally cutting off thousands of its telephone lines without justification. Constetel used those lines to provide its customers with discounted internet-to-mobile calls.

Movistar said it terminated these service plans as they were priced below cost, but Constetel argued that cutting the lines was an exclusionary practice that arbitrarily restricted competition.

However, the competition court dismissed the claim, ruling that Constetel failed to prove that the Telefónica subsidiary was dominant in the market for the supply of mobile phone services. Constetel also failed to establish that Movistar's behaviour had a negative effect on competition, the court said in its [judgment](#), in part because of Constetel's small size and share of the market. Movistar had argued that it was not dominant, but instead operates in a market that is subject to intense competition among suppliers. The court agreed, noting that Movistar's 39 per cent market share was comparable with those of rivals Entel and Claro, which together occupied 68 per cent of the same market and exerted restraint on Movistar.

Mario Bravo at Estudio Bravo in Santiago, who represented Constetel, described the decision as "unjust" and told *Latin Lawyer's* sister publication *GCR* that the company planned to appeal the decision to the country's Supreme Court on Tuesday.

"I was astonished with TDLC's decision, because in the past, the Tribunal has really helped to build a more competitive telecommunications market," he said, adding that the court had moved away from previous abuse decisions in the sector, which helped remove barriers to entry.

“The mobile telecommunications market has changed but in a negative manner: it is now highly concentrated in three dominant operators, and key Supreme Court decisions to improve competition have been ignored by dominant operators,” Bravo said.

Counsel to Movistar did not respond to requests for comment.

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