

# ABOGADOS & CONSULTORES

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### Venezuelan Insight

#### ***Telecommunications Opening goes on.***

The entrance of new operators into the market, mostly operators of fixed telephony services, the execution of interconnection agreements between new and incumbent operators and the role played by the Venezuelan regulatory body, CONATEL, in leading and monitoring such processes, are among the most relevant factors that have followed and accompanied the telecommunications opening. Additionally, the constitution of the Long Distance Operators Committee, will bring the possibility for telephone users to choose the operators that shall carry their domestic and international long distance calls. It is expected that this service be available by November 2001 through the mechanisms of code dialing and direct dialing.

#### ***Tender Offer on CANTV.***

The multinational company AES Corporation (AES) formalized before the Comisión Nacional de Valores (Securities National Commission) a tender offer on CANTV, the biggest telephone company of the country, which operated up to year-end 2000 as a monopoly in fixed, national and international telephony. The hostile takeover process which started in August, will continue in October.

#### ***Telecommunications National Inspection Plan.***

Starting in October and vested with the powers conferred to it by the Telecommunications Law, CONATEL will perform tax inspection functions on telecommunications companies. The funds collected will finance the operation of the regulator, the Universal Service Fund and the Telecommunications Research and Development Fund. The Plan will be implemented gradually and informing the operators about their obligations. It is estimated that nearly 20% of the companies are in default of their tax obligations.

#### ***The spectrum auction for digital trunking systems: A response to the needs of the public market?***

The communication needs of private and public mobile users are complex and it is argued that certain market realities may allow, in some circumstances, to regard digital trunking and mobile telephone services as functionally equivalent services. Currently, CONATEL is assembling an auction process for digital trunking services in the 400 Mhz band. Such auction should have taken place during the last quarter of this year, but among other factors, the international recession in the telecommunications sector prevented it. Thus, the debate surrounding these systems and their future in Venezuela is to be continued. For the deployment of these services to be successful, the State policies to be adopted in their auctioning and regulation will be crucial. Internationally, the experience has been that mobile telephone carriers have battled vigorously to impose restrictions on digital trunking operators, whose convergent technology could cross the thin line between public and private needs.

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For any follow up on this Newsletter topics, please feel free to contact Carlos Seade at  
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## ***Natural Gas Brings New Business Opportunities.***

Petróleos de Venezuela plans to develop the natural gas industry with the purpose of achieving two main objectives: to deliver gas to citizens living in distant regions of the country and to fulfill energy requirements that will be demanded by the economic growth, as it is expected by the official sector, following several years of recession. The Project requires an estimated investment of US\$ 10 billion over a ten-year period. Private investment is regarded as the main source of funding, considering the following business areas: production, transmission, distribution, processing and liquefaction. It is highlighted that the significant gas reserves contrast with the internal market size. However, the local electricity market and the exportation of liquid natural gas may balance the scale.

### ***Expectations Surrounding New Law Projects.***

For several months, investors and different economic sectors of the country have been waiting for the enactment of several laws. Among such laws are:

- ***Hydrocarbon Law:*** It proposes the increase of oil royalties and majority interests of PDVSA (State-owned company) in investment projects.
- ***Banking Law:*** The announcement of new drastic measures for the banking activity is expected. On the other hand, banks recently created by the government, such as Banco del Pueblo (People's Bank) and Banco de la Mujer (Woman's Bank) may be left out of the new regulation.
- ***Lands Law:*** The population, particularly landowners, await to see the interpretation that the Executive Branch will give to the social function of the ownership right regarding land productivity.

### ***The New Electric Service Organic Law was approved.***

On September 27, 2001 the National Assembly approved, in second session, the Electric Service Organic Law. This new law shall derogate and reform in some aspects the Electric Service Law that has been in effect since September 1999. Thus, (i) this new law shall be enacted as Organic, on the ground of the reserve established for the State over the activity of hydro-generation in the watersheds of the Caroní, Paragua and Caura rivers; (ii) extensions are granted regarding the terms fixed for the issuance of regulations (1 year), the functioning of the Electric Energy National Commission (1 year) and the exertion by such Commission of certain powers (6 months), the creation of the Electric System National Management Center (January 1, 2003) and the legal separation of the generation, transmission and distribution activities (January 31, 2003); and (iii) the tax exemption

provided for the transactions directly or indirectly related to such mandatory legal separation is clarified, broadened and extended until December 31, 2003.

### ***The New Organic Science, Technology and Innovation Law disturbs the private economic sector.***

The Organic Science, Technology and Innovation Law, in effect since September 26, 2001, has raised serious questions in the private sector. This new law mandates that every public or private enterprise, organized and existing in Venezuela, or abroad but carrying out activities or investments in the national territory or entering into contracts to be performed in Venezuela, that generates annual gross income above one hundred thousand taxable units (T.U. 100,000), invests a percentage of its before-taxes annual profits that is between 0.5% and 20%. Such investment must be in "human resources training", "investigation", "development" and the "process of technological transfer into the country" (with respect to foreign enterprises only). Additionally, the new law leaves at Presidential discretion the establishment of the annual investment percentage.

### ***The Release and Payment Facilities Regime for National Tax Obligations was approved.***

The recently enacted Law N° 35 of October 3, 2001 provides for a temporary and exceptional regime to incentive the willful fulfillment by taxpayers of their National tax obligations. This law applies to accrued or assessed tax debts, including fines and other accessories, corresponding to the fiscal years of 1997, 1998, 1999 and 2000. From the Tax Administration perspective, state, municipal and Metropolitan District taxes are excluded from this law. Likewise, the following debts are excluded from such regime: (i) Those constituted by amounts withheld or received and not paid by withholding and reception agents of income tax, whole sale and luxurious consumption tax and value added tax; (ii) custom taxes; (iii) bank debit tax; (iv) debts acquiesced by the taxpayer or representatives; and (v) debts with respect to which an executory proceeding has been initiated and a judicial seizure order granted. Additionally, bankrupt taxpayers are excluded from the benefits of this law which shall be in effect until April 2002.

### ***The new Venezuelan Central Bank Law redefines the autonomy of the Issuing Entity.***

The new Law N° 36 of October 3, 2001, enacted to adjust the regulatory framework applicable to the Venezuelan Central Bank, redefines the autonomy of the Issuing Entity through a new conception of its functions and the institutional controls to which it is subject. Accordingly, the Law provides that the

Venezuelan Central Bank is an integrating part of the National Government. Likewise, regarding currency exchange matters, the Venezuelan Central Bank now participates in the foreign exchange market and oversees and regulates the same, but "in such terms as agreed with the Executive Branch". With respect to the restrictions applicable to the Issuing Entity, the new Law refers to the political control of the National Assembly, the auditing exerted by the Republic General Comptroller, the submission to the Banks and Financial Institutions Superintendence and also refers to the judicial power residing on the Supreme Tribunal of Justice.

## Regional Insight

### **Brazil**

- Due to the recession in the telecommunications market in Brazil, local companies like Embratel, which is controlled by WorldCom Inc., are considering headcount reductions. ANATEL, the local regulator, studies the possibility of liberating long distance rates for next year.
- The opening and restructuring of the Brazilian energetic sector in 1995 eliminated important access barriers for international investments and currently create interesting business opportunities.

Due to the need for short term expansion of thermoelectric generation plants, the Brazilian Government implemented last year the Priority Thermoelectric Program, in order to promote the use of natural gas as fuel for the generation plants.

### **Peru**

Peruvian Department of Transportation and Communications seeks to modify the current regulations of the Telecommunications Law by preparing a project statute that matches the regulatory framework with the activities of the private sector.

### **Colombia**

It is expected that the Department of Communications carries out the auction of three PCS licenses which will include the East, West and the Atlantic regions. Mobile telephone companies will not be allowed to participate in the auction.

### **Paraguay**

Unidad Reguladora de Servicios de Comunicaciones (URSEC), the local regulator, announced that international telephony will be opened to competition by the end of the year 2001.

### **Ecuador**

The telecommunications industry will be totally opened to competition starting January 1, 2002. As part of the opening process, licenses for wireless and domestic and international long distance carriers are expected to be auctioned by the end of year 2001.