

INTEGRITY PACT

FINAL REPORT REGARDING THE INDEPENDENT OBSERVATION

OF THE PCS AUCTION PROCESS CONDUCTED BY CLD/TI

Presented to the President and members of CONATEL:

Issued by the Latin American Corporation for Development (Corporación Latinoamericana para el Desarrollo), chapter of Transparency International in Ecuador (CLD/TI):

1. CLD/TI, CONATEL (National Council of Communications) and SNT (National Secretariat of Communications) signed a cooperative agreement on March 5, 2002, to implement the project called "Transparent Auctions";
2. Pursuing this agreement, CLD/TI has monitored and observed the auction process of Personal Communication Systems (PCS) conducted and administered by CONATEL, over the period of November 2001 to January, 2003;
3. Under the covenant and beginning on March 5, 2002, date in which the above mentioned Cooperative Agreement was signed, CLD/TI monitored independently all of the phases of the process of auctioning of use, in concession of frequency bands and sub-band, for the provision of telecommunications services for PCS;
4. This process was conducted according to the terms established in the Cooperative Agreement, all of its Annexes and the practices of Transparency International applicable to Integrity Pacts;
5. CLD/TI conducted the observation taking in consideration Ecuadorian Law and minimum standards pursued by Transparency International. Those standards required that CLD/TI plan and perform the observation process to obtain a reasonable assurance whether the process complied with what was agreed upon in the Cooperative Agreement and in all of its annexes, and therefore the expected level of transparency and accountability were to be increased. The monitoring process included examining, on a general basis, documentation and other data supporting the decisions taken by CONATEL, during the auction process. It also included appraising the technical, procedural and legal decisions and interpretations taken, as well as witnessing the overall performance of all parties involved in the auction process, utilizing the following procedure, that was dully notified to CONATEL in writing:
 - a. **Regarding procedural issues to increase the transparency and accountability of the auction process**, CLD/TI provided recommendations to CONATEL in writing or during meetings, that could have been accepted or not. In general the majority of recommendations issued by CLD/TI were accepted. The most relevant ones were incorporated to Annex I and II of the Cooperative Agreement, "Procedure for Transparent Auctions" and "Commitment of Transparency", respectively. Others are found on the proceedings of the Auction Committee or CONATEL meetings. The following ones are mentioned because of their importance:
 - i. **Access to information:** CLD/TI had complete access to the information related to the process; and provisions were agreed to secure access to

information to the general public, in a timely manner, according to the schedule established. All relevant information was posted on the Internet;

- ii. **Access to meetings:** CLD/TI could participate in any meeting that involved employees of CONATEL and/or the companies, which had acquired the bidding documents or their agents. CLD/TI received notification of the meetings at least 24 hours in advance;
 - iii. **Bidding documents:** The bidding documents were placed on public disposition through the CONATEL website one week after the closing of the sales of the bidding documents;
 - iv. **Inclusion of the Integrity Pacts on the bidding documents:** CLD/TI and CONATEL agreed to include the Integrity Pact as one of the requirements on the pre-qualification stage, becoming a mandatory document to be signed by all the bidders;
 - v. **Confidentiality Clause:** Everyone who was rendering services to CONATEL and SNT and that were involved with varying degrees of responsibility in the process, as well as, all the members of CONATEL and all of their advisors, committed to the following:
 1. Maintain absolute confidentiality regarding the process, pursuing to the protection of privileged information that otherwise and untimely released would or could have given an unlawful advantage to one or more of the competitors and constituted, therefore, an act of corruption;
 2. Refrain from *ex-parte* communications or contacts with participants; and,
 3. Avoid individual meetings with proponents once proposals were received.
 - vi. **Conflict of Interest Clause:** Everyone who was rendering services to CONATEL and SNT and that were involved with varying degrees of responsibility in the process, would excuse themselves from participating in the process upon conflict of interest with one of the participants or when unable to proceed in an objective manner. The following, among others, were considered conflicts of interest:
 - a. Having or having had a commercial or contractual relationship with one of the bidding companies in the past four years;
 - b. Having a personal or close familiar relationship with employees of the bidding companies; and,
 - c. Provision of consulting services for the bidding companies in the last four years.
 - vii. **Ethical Commitment:** Within the context of the commitment, the employees involved in the concession process accepted to refuse to have any contractual obligation with the awarded company for a period of one year, following the conclusion of the auction process.
- b. **As per as the topics directly related with the technical and financial aspects, within which the package of telecommunications services to be auctioned was designed,** CLD/TI did not make nor it will make any recommendations in this area. Rather, CLD/TI promoted the analysis and

discussion of controversial issues and requested CONATEL to answer in writing, questions posted by CLD/TI regarding those issues. Specifically, CLD/TI, as an independent observer, fostered that the public entity in charge of the auction process, justify all its decisions in a satisfactory manner in writing, and incorporated those documents as part of the auction proceedings. Those communications and the respective answers can be consulted in CONATEL, since all of the proceedings of the auction process are a matter of public record; and,

- c. **Regarding the legal matters**, specially if there was any controversy over the interpretation or enforcement of any legal or regulatory norm, either on the perception of the participants or the general public, CLD/TI could consult the Attorney General, pursuing the competence of the Attorney General to interpret the Law with binding effects for all entities in the Public Sector. Concerning such consultations CLD/TI would inform CONATEL before hand, as long as, CLD/TI considered that it was in the best interest of the process. In this particular process no such consultation was deemed necessary. Furthermore, legal issues aroused regarding the minimum bidding price established by CONATEL for the auction, based on the study and recommendation rendered by Latin Pacific Capital. CONECEL S.A. part of the American Mobil Group, one of the current operators of cellular phone services in Ecuador contested the minimum bidding price. CONECEL (PORTA) argued that a constitutional rights violation in the process, contending that the amount of the minimum bid for the auction disregarded the right to equal treatment. That was, in their opinion, that the new operator should have paid at least the same amount that they paid when awarded a similar contract ten years ago. Therefore, they filed a suit and also solicited the Court to suspend the auction process pending their judicial decision. In fact, the judged granted the suspension, which put the process on halt for two months. Finally, the Constitutional Tribunal disregarded the suit and ruled in favor of CONATEL. The auction process was completed and the contract is to be signed during the month of January.
6. The current monitoring report reflects the perception of CLD/TI, since we agreed to issue an account of the auction process, based on our participation as independent observers. In no way this document is a certification or confirmation that the process was free of wrongdoings, but it is an accurate portrait of the procedure as it was observed and understood by CLD/TI;
7. *Based on the previous information, we believe that the monitoring process that we conducted provides a reasonable basis for our opinion that the auction process of PCS and all documentation reviewed by CLD/TI presented fairly, in all material respects, compliance with the terms of the Bidding Documents, the Cooperative Agreement and all its Annexes. A detail analysis is contained in the following pages.*
8. This report is intended for the information of CONATEL, NST, Partnership for Transparency Fund, Transparency International and the general public.

January 10, 2003

GENERAL INFORMATION:

PROJECT INFORMATION:

Project Title:
"TRANSPARENT AUCTIONS: AUCTION OF PCS".

Project Duration:
Twelve months

Starting Date:
March 30, 2002

Anticipated Completion Date:
March 30, 2003

ORGANIZATIONAL INFORMATION.-

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Corporación Latinoamericana para el Desarrollo (Latin American Corporation for Development), chapter of Transparency International in Ecuador.

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I. BACKGROUND:

The preoccupation to consolidate systems of public procurement that are efficient and effective, and follow the principles of transparency and equality, has been shared by actors of all of the countries in the region.

In Ecuador, Public Procurement is envisioned as a major source for Corruption. Regrettably, little has been done to implement the monitoring of public contracting. The reason being the lack of both information on the subject and political and institutional good will.

The initial experience regarding “Islands of Integrity”, which later developed into “Integrity Pacts”, began years ago. Transparency International was searching for a concept, a method to escape “the prisoner’s dilemma” that people who are struggling against corruption are confronted with, and found it in the concept of “Islands of Integrity”.

This theory suggests, that if it would be possible to identify a number of markets or sectors, and commit the actors within these markets to integrity, in a coordinated manner, and monitor them in an active form, such processes could eventually become transparent.

Additionally, let us remember that Transparency International was born from the growing frustration of one person, Mr. Peter Eigen, who had witnessed on several occasions, how the processes of international public procurement led to the loss of resources due to corruption. Indeed, the initial focus of Transparency International was to diminish “the grand corruption” associated to these types of contracts.

Within this context, the concept of “Islands of Integrity” in public procurement was born. This concept recognizes that when high levels of corruption exist within a system, it is difficult to achieve transparency. As an initial step, the concept proposes to work towards transparency through the isolation of transactions within the system.

It is important to place attention on the goal behind the application of an instrument such as an “Integrity Pact”:

- a) To promote the transparency solely on the processes of public procurement in which they are applied; and,
- b) As a result, to foment, through their application, the institutionalization of transparent practices in public procurement processes in general.

If the purpose were merely to obtain transparency in certain – important, relevant – public procurement processes, then the current legal framework would not be a relevant element. However if on the contrary, one would seek to have a medium or long-term impact on public procurement in general, it is completely relevant.

Thus, the objective of the application of a “Integrity Pact” is certainly not only the independent observation of a individual process, but the creation of a window of opportunity to promote the discussion, analysis and institutionalization of certain elements

that characterize a good procurement system: efficiency and effectiveness; competitiveness; transparency; publicity; and civic participation, in all public procurement processes.

TI began its experiences with the “Integrity Pacts”¹ in 1996. Undoubtedly, the most systematic experience developed so far, has been the Colombian.

The most recent involvement of the Ecuadorian chapter in applying Integrity Pact falls under a larger project named "Transparent Procurement", that began with an initiative of CLD/TI to advocate transparent public procurement in Ecuador.

CLD/TI convened a representative group of experts in the field of procurement of goods and services in order to analyze, from the perspective of civil society, the current Public Procurement Law and submit comments to it.

The Work Group took into account the following basic principles in Public Procurement: efficiency and effectiveness, open competitiveness, transparency, publicity, and civic participation. The Group has dedicated itself to the analysis of different proposals suggested by several sectors collaborating in the elaboration of a comprehensive proposal for legal reform.

Recently, CLD/TI had a unique opportunity to introduce “Integrity Pacts” in Ecuador, for the National Telecommunication Council of Ecuador (CONATEL), the governmental organization responsible for the development of the communications field in Ecuador, scheduled a public auction to grant a specific sets of frequency bands. Private companies will use these bands to provide telecommunication services in the modality of Personal Communication System (PCS).

In order to foment a greater level of transparency in the auction process of such bands, CONATEL agreed that CLD, as chapter of TI, structure and implement an "Integrity Pact" for this particular process.

By conducting a successful monitoring strategy in this specific case, the experience and public recognition will provide the opportunity to implement this model in future processes, thus preventing corruption from occurring in other large and important public contracts.

Furthermore, CLD/TI is focused mainly in the structural change of the conditions that permit and promote corrupt activities in public contracting. The opportunity of implementing Integrity Pacts could create an adequate environment towards the promotion of structural reforms in the public contracting system in the country. Also, it should be considered that the public perception towards corruption in Ecuador, both internally, as well as international, is highly negative.

¹ When TI decided to wager on the “Integrity Pact”, it was generically conceived as a contract through which the proponents on a determined international procurement process, committed themselves explicitly, and in respect of the government, not to offer bribery and accept certain penalties in case of disrespecting the pact. The “Integrity Pact” suppose not only the agreement not to bribe, but also the active participation in the monitoring of the process and of other competitors; the will to denounce any discovered irregularity, as well as, the acceptance of any decision that implies a sanction that can go beyond what the law prescribes.

The nature of the project and its projected time frame has advocated the promotion of transparency and anti-corruption in the country at a very efficient cost-benefit ratio, for the total amount of the contract was over US\$ 30.5 million, and the cost of the monitoring process was less than US\$ 15,000.

Furthermore, through this project CLD/TI will seek to promote reforms that permanently incorporate better standards into the concession of public services, the procurement of goods and the implementation of public works in Ecuador.

II. PROJECT DESCRIPTION:

General Objective of the Project:

Improve transparency and accountability in the public contracting process, including auctions and concession contracts.

Specific Objectives of the Project:

- a) Improve transparency and accountability in the auction process of telecommunications bands carried out by the National Telecommunication Council of Ecuador (CONATEL);
- b) Improve citizen's perception of transparency regarding the public sector; and,
- c) Initiate a public discussion process about the public contracting regulations applicable in Ecuador for concession of public services.

In order to fulfill the objective of this project the following activities were implemented:

1) *Negotiation processes with possible State counterparts, in order to promote the benefits provided by the implementation of Integrity Pacts.*

The first step was to define, in concordance with the effective legal framework, the appropriate counterpart. In this specific case, it was necessary to divide the obligation derived of the Agreement between the CONATEL (National Telecommunications Council) and the NST (National Secretariat of Telecommunications). This activity took a three months period and required a continuous effort to reach an agreement with CONATEL, since:

- a) There is a difficult tension between the interest in depicting results and the necessity of dedicating the sufficient time towards adequately structuring the bidding and discussions with experts or interested parties;
- b) The tendency to consider that all problems should be resolved through legal means; and,
- c) The inherent difficulties of working on ethical compromises and voluntary cultural changes, as those included within the "Integrity Pacts".

2) *Design of specific legal instruments to be included in the agreement to be signed by CONATEL and CLD/TI, among others parties to the process, such as:*

- **Code of Conduct** for CONATEL and SNT employees involved in the auctioning process;
- **Guidelines for Transparency in the Auction Procedure** to include specific transparency principles under which the process will be conducted; and,
- **Integrity Pact** to be signed by the President of CONATEL and all the companies participating in the auctioning process.

The negotiation of these legal instruments was a lengthy process that took more than a month and required several drafts and a great deal of negotiation, requiring the discussion of every document both with the technical and legal teams of the counterpart.

3) Signing of a written agreement between CONATEL and CLD/TI.

a) The agreement clearly stated the terms and conditions that guided the working relationship between both institutions. CONATEL signed the main body of the agreement and the *Guidelines for Transparency in the Auction Procedure* after the initial period of negotiations that proven to be successful. *The Code of Conduct* for CONATEL employees involved in the auctioning process for PCS, was signed by the entire staff and by all other public officials involved from other public entities, as well as, by private advisors and consultants, and legalized through a Public Notary.

b) Regarding the *Integrity Pact* signed by the President of CONATEL and all the private sector companies participating in the auctioning process, it was included into the bidding documents of this particular auction, since CLD/TI became formally involved in the process before the final version of the bidding documents was issued. By including the Integrity Pact on the bidding document any possible argumentation on behalf of the companies is avoided, binding them to the instrument and the goals it seek.

c) Guidelines for Transparency in the Auction Process: CLD/TI participated informally in the discussion and structuring of the auction process, suggesting the inclusion of best practices intended to preserve the transparency within the process. Most of the recommendations were included in the Annex to the Agreement: *Guidelines for Transparency in the Auction Procedure*, which has been already mentioned (See Annexes).

Special attention was placed on the following issues:

- a) Clearly defining which of the requirements was mandatory and if not complied with, resulted in automatic disqualification, avoiding discretionality in the interpretation. The pre-qualification process was designed to allow the participants to repair possible omissions in the formal requirements. These requirements were clearly stated, and restricted the capacity to “select” competitors on discretionary grounds;
- b) Guaranteeing an adequate evaluation and separation of the technical and economic aspects of the proposals in such a way that, once the technical suitability of the proposals was assured, those participants satisfying the requirements were qualified to participate in the financial bidding stage – which had to be conducted in a public hearing. Of the seven companies that

- purchased the bidding documents, three were prequalified following this procedure;
- c) Facilitating the external monitoring process by allowing CLD/TI to accompany all of the meetings held by the Auction Commission, and the different sub-committees in charge of pre-qualifying the companies, and preparing answers to consultations referred by the acquirers of the bidding documents;
 - d) Eliminating the requirement of documents, which did not add valuable or pertinent information for the proposals' evaluation. A common malpractice in public contracting, is to incorporate specific non-justified requirements for the companies, which could only be fulfilled by specific companies who had previous unlawful notice of these requirements;
 - e) Avoiding subjective criteria in the evaluation (for example the qualification of the proposed methodology) which may bias the results;
 - f) Eliminating requirements or criteria which can be completed by only one proponent;
 - g) Eliminating, as much as possible, the existence of confidential information and control when required, its possible leakage. In that order, CLD/TI negotiated with CONATEL a mechanism to determine the information that should be confidential for the better development of the process, while providing public access to anyone interested to the majority of the information;
 - h) Public discussion of the draft contract in order to avoid contract terms which would favor one proponent; and,
 - i) Avoiding *ex-parte* communications.

With the involvement of specific national and international experts on the analysis of transparency issues, CLD/TI monitored and contributed recommendations in each step of the process, including the content of the auction documents; the dissemination of information; the aspects of confidentiality and transparency; the content of the concession contract, etc.;

Once the auction process had finalized, CLD/TI issued this report describing how the process was conducted, and the lessons learned.

III. ANALYSIS OF THE SPECIFIC TOOLS IMPLEMENTED FOR THE PROCESS:

1. Cooperative Agreement:

The Agreement that ruled the relationship between CONATEL, SNT and CLD/TI was, without any doubt, the cornerstone in which the entire process was founded upon. It clearly established the objective of the cooperation, the terms and conditions under which it was to be fulfilled, and the obligations and rights recognized to the involved parties. The following are the main clauses included in the Agreement, which have been evaluated regarding their application. The clauses of the Covenant are cited with the commentaries underneath.

a) OBJECTIVE:

In the current covenant, CLD/TI assumes the responsibility of monitoring all of the phases of “Transparent Auctions” up until the culmination of the process with the signing of the contracts. The process includes, among other elements, the design and implementation of the necessary Integrity Pacts in the process of auctioning, of use in concession of frequency bands and sub-band, for the provision of telecommunications services, both Wire Local Loop (WLL) and Personal Communication Systems (PCS). This process will be guided according to the terms established in Annex I, entitled “Procedures for Transparent Auctions” of the present covenant.

The general objective of the agreement stated in the prior clause determined the capacity of CLD/TI to fully monitor the auctioning processes of telecommunication bands, in all and every stage. Also, the implementation of some specific tools (Integrity Pacts, Procedure for Transparent Auction, etc.) is stated as mandatory. Therefore, the level of commitment to these instruments is not subject to revision, consolidating CLD/TI’s participation.

The specific instruments applied on the process responded to a particular timeframe related to the phases of the bidding process. The Code of Conduct was the first instrument applied in order to assure the commitment of the entire staff of the public institutions involved. The Code was legalized on the 6 of August 2002, signed by the totality of the personnel of the auctioning institutions. Furthermore, the terms of the Code of Conduct were adapted to the Confidentiality Agreement applied to the members of the Bidding Commission, which is an organ composed of representatives of various relevant institutions. The Confidentiality Agreement was signed by the members of the Commission on the 8 of July 2002. The third instrument designed for the process was the Integrity Pact, which was presented on the 15th of October, 2002.

5. OBLIGATIONS OF THE PARTIES:

In order to guarantee the effective execution of the covenant, CLD/TI will commit to the following:

a) Coordinate all the activities and administer the funds for the execution of the present covenant;

In order to have independence of action, and eliminate the perception of conflict of interest, CLD/TI was autonomous both to coordinate the actions directed to monitor the process, as to administer the corresponding funds. The administrative costs were covered through the funds awarded by CONATEL / SNT, while most of the salaries and honorarium of the personnel involved were covered by the funds granted by CLD/TI’s counterpart, the “Partnership for Transparency Fund”. It was allowed that the budget would be managed in a very flexible way, in order to fulfill any new requirement of the monitoring process.

b) Adapt the general methodology proposed by Transparency International for the implementation of Integrity Pacts to the specific conditions of the processes for auctioning the use of frequency bands and sub-bands, through concession, for the provision of telecommunication services (WLL/PCS);

It became clear from the beginning of the negotiation phase that the general methodology of Integrity Pacts should be revised, and adapted to the requirements of this specific process. In most of the cases, IP's should not impose sanctions on companies and governmental functionaries involved in the process, beyond the ones stated in the effective legal framework. The problem in Ecuador resided on the lack of security, both real and perceived, of the Rule of Law in the country. Therefore, heavy sanctions were included and accepted by bidding companies in case of wrong doing, imposible through an arbitration process.

c) Implement all of the processes, procedures and steps in order to monitor the principles that are described in Annex I with relation to the "Procedure for Transparent Auctions", as well as those related with Annex V "Integrity Pact for PCS", which are integral parts of this covenant;

CLD/TI appraised the auction procedure designed by CONATEL/SNT and through this evaluation issued procedural recommendations, contained in what was called "Procedure for Transparent Auctions". By incorporating the elements proposed by CLD/TI, the process acquired a greater level of transparency, both perceived and real. Nevertheless, even if the process formally appeared to be transparent, it may appear to be protected, there is always an inherent risk of wrongdoing within the process, unperceivable by any observer. The setting of general rules and bylaws provides an impression rather than assuring the transparency within the auction. The specific usefulness of these instruments resides on opening the possibility to introduce an external opinion to the decision-making structure, both on a procedural and legal perspective.

The majority of the recommendations issued by CLD/TI were included in the bidding procedure without any modification. In particular cases such recommendations where not feasible to apply, so CLD/TI negotiated with CONATEL's representatives in order to seek the best possibilities, always considering the benefit of the process.

Among the recommendations issued by CLD/TI was the obligation of the Bidding Commission to keep a register of every meeting held between CONATEL/SNT's staff and the representatives of the bidding companies. However, the amount of communication between them made it impossible to establish a comprehensive procedure to register the exchange of all communications. The Bidding Commission agreed to keep record of the formal meetings in which decisions were taken; in the case of informal meetings, held to clarify consultations made by the companies with no implication on the integrity of the process, the presence of CLD/TI's representative and a formal record –in the form of a minute- were not obligatory.

A similar situation occurred in the application of the Bidding schedule. At the beginning of CLD/TI's participation, the recommendation issued to CONATEL insisted on the need of maintaining the original schedule and not subject it to any modification. However, the particularity of this auction process obligated to reform the schedule. For instance, the period established for the companies to prepare their financial bid resulted inadequate, and all of them, during separate periods, solicited extensions to the established chronogram. Therefore, the original recommendation was withdrawn, and CLD/TI adhered

to the decision of the Bidding Commission, considering the extension beneficial since it promoted the participation of a higher number of companies, while tending to increment the amount to be finally paid for the auctioned band.

d) Advise the CONATEL and SNT team who have direct involvement in the auctioneering processes, in the preparation and the subscription of the “Code of Conduct”, that is a substantial part of the present covenant, referred to in Annex II;

The application of the Code of Conduct proved to be a challenge. The perception of the personnel towards the instrument was that subscribing the document represented accepting the presence of corruption within the institution. The change in the perception came from the realization of the benefits associated with signing the commitment. Finally, after a negotiation process in which CLD/TI’s representatives exposed the benefits of the instrument, CONATEL accepted it. Afterwards, the instrument was circulated among the personnel for its signature. The finalized document signed by all the staff of the institutions was legalized on August 2002.

It is important to point out that the Commitment is a highly detailed instrument, which regulates the activities of the personnel extensively. The compliance to this instrument demonstrates a positive will on behalf of the public officials. Among the provisions established in the document is the prohibition for public officials involved to be contracted by the awarded company, and its subsidiaries, for a year after the concession.

e) To convene meetings, jointly with CONATEL, with the objective of garnering the interest and commitment of the potential bidders in the auction of WLL, in order to have them subscribe the Integrity Pacts, the text of which is in Annex V of the present covenant. The signing of this Pact for the process of WLL is voluntary for the bidders and will be applicable to the process only if all bidders dully sign the pact. Furthermore, CLD/TI commits to the drafting of an Integrity Pact for PCS, to be included as mandatory for all bidders, as part of the bidding documents for the PCS auction process; as well as, to dully implement all of the processes, procedures and steps in order to monitor the principles described within them;

The implementation of the Integrity Pacts in this process was imposed by including the Integrity Pact into the Bidding Documents as a prequalification requirement. CONATEL agreed to implement every necessary action in order to promote the subscription to the terms of the Integrity Pact. Therefore, all of the acquiring companies, when submitting their prequalification documents, publicly signed the Integrity Pact as a mandatory element.

The Integrity Pact included a set of regulations regarding the participating companies and their activities in the context of the Bid. Among those regulations its important to highlight the prohibition to emit any kind of payment or retribution for benefiting the specific company on the process, the disposition focused to avoid collusion among the bidders, and the commitment to avoid bribing any interested party searching to modify or alter the normal development of the Bid. The consequences of breaking any of the aforementioned dispositions include the finalization of the contract, if awarded, and economical sanctions.

Any legal responsibility that may be applicable under local legislation may also be applied in addition to the ones stated in the Integrity Pact. Furthermore, the terms stated in the Integrity Pact may be imposed to the representatives in the headquarters of the bidding companies, avoiding the dilution of responsibilities in the decisive circles.

f) Analyze the clarity and transparency of the documentation as it refers to the auctioneering processes, and, to this end, invite or contract the necessary experts at the expense of CLD/TI;

Through the assistance of external experts, referred to CLD/TI by “Transparencia por Colombia”, related documentation was reviewed. The evaluation was focused primarily on identifying possible procedural gaps, which may allow the presence of discretionary decisions that may eventually taint the process. The documents reviewed included the Bidding Documents and the Concession Contract. Even though CLD/TI was assisted on the technical aspects of the process, the emphasis of the recommendations was placed on the transparency of the procedure.

As mentioned before, the “*Procedures for Transparent Auctions*” guidelines were incorporated by CONATEL for this process putting emphasis on the publication of the Bidding Documents on the Internet, through CONATEL’s home page, recommendations on the procedures to regulate meetings between public personnel and the private companies participating on the bidding process, among others. CLD/TI is pleased to confirm that the majority of these principles were fulfilled according to the terms and conditions imposed through this instrument.

h) Monitor the fulfillment of the conditions established in the “Integrity Pacts”;

The implementation of the Integrity Pact is generally envisioned as a mandatory instrument, which is binding even after awarding the contract. Therefore, the participation of CLD/TI in the monitoring of the implementation of the terms and conditions of the Integrity Pacts is an ongoing process. To the present, none of the conditions have been violated.

l) Preparation of periodic press releases for the general public regarding the development of the implementation process of the Integrity Pacts;

The cost associated with the publishing of *communiqués* in the media, obligated CLD/TI to prioritize on the use of the funding available. Therefore, such paid announcements were to be issued only if considered necessary, in cases such as the detection of major irregularities on the bidding process. Until the completion of this report, there has not been the need to publicly denounce any wrongdoing. Nevertheless, CLD/TI issued a press release asking any interested party that may have information regarding wrongdoings in the process to denounce it. No denouncements were presented.

j) Promotion of the necessary meetings with the Special Commissions, the President of CONATEL, employees and officials of SNT and other actors in order to ensure the efficient implementation of the covenant;

The communication flow between CLD/TI and the members of the counterpart was extensively open and fluid. The representatives of CLD/TI had permanent access to the meetings held by the Bidding Commission, the specific Committees, and in the cases where issues related to the development of the bidding process were discussed, to the meetings of CONATEL. Also, CLD/TI was actively present on such meetings, issuing recommendations and formulating inquiries on the subjects of concern. Furthermore, the Secretariat of CONATEL permanently kept CLD/TI informed and provided the information required on reasonable periods of time.

k) Elaborate and formalize (through signature of parties) the proceedings that will be necessary in order to document the process development;

The Secretariat of the Commission elaborated the minutes for the meetings held by the Commission referring the auctioning process. CLD/TI had the right to revise the minutes and submit any comment to its contents. Afterwards, those minutes were formalized, through signature of the Secretariat and reside on custody of CLD/TI. These documentation serve as a record of the interventions held in the Commission and the final decisions taken.

l) Supervise the needed human resources for the execution of the present covenant;

Two members of CLD/TI's staff were designated to execute this project. The positions awarded were those of Project Director and Technical Coordinator. The Project Director had the responsibility to design the instruments applied to monitor the auctioning process, negotiate their terms and conditions with the counterpart, review and evaluate the decisions taken in the process, formulate the communiqués and questionnaires directed to CONATEL, and supervise the activities of the Technical Coordinator.

On the other hand, the Technical Coordinator was responsible to attend every meeting held by the decisive instances in the process, record the decisions taken, collect and organize the information produced concerning the process (including the formal minutes, correspondence, newspaper clippings, etc.), supervise the signing of the instruments and the completion of their terms.

m) Comply with the instructions of the External Observer of the Covenant;

The figure of *External Observer of the Covenant* was created through an agreement developed between the Nation's Attorney General and CLD/TI. Originally, the Attorney General Office role stated on the Covenant was a permanent one, since they had to permanently accompany the process. However, this original responsibility was excluded because it could have generated a conflict of interest, since the Attorney General may eventually had to respond to consultations on legal matters that may resolve a controversy, which in fact happened (See annexes).

p) Elaborate, approve and formalize (through signature of parties), jointly with CONATEL and SNT, the Proceedings for the Finalization of the Covenant, the format of which is presented in Annex III;

The finalization of the working relationship between CONATEL/SNT and CLD/TI will be legally registered through Public Notary when all of the activities contemplated on the Covenant are fulfilled.

q) In case of doubt, the ability to solicit independent expertise, as long as the regulations of confidentiality remains intact;

CLD/TI has relied on the assistance of telecommunications and legal experts, who have previously collaborated with Transparency International. Furthermore, CLD/TI engaged an Ecuadorian lawyer, who advised CLD/TI on matters related to local legislation. Both external advisors have complied with the regulations referred to Confidentiality, by signing a Confidentiality Agreement.

In order to guarantee the effective execution of the covenant, CONATEL and SNT committed to the following:

a) Define and make public, as soon as possible, the procedural chronogram of the auction process and conduct every effort to comply with it;

The chronogram was published on the 23th of June, 2002, complying with the obligation of CONATEL and SNT under the Covenant. Nevertheless, the original chronogram was reformed during the process. Even though the original recommendation issued by CLD/TI promoted the immovability of the schedule, the characteristic of this particular bid obligated some adapting to the situation. As part of the process, the bidding companies were authorized to present recommendations to the Bidding Commission. Several of the participant companies submitted requests to extend the original terms established for the preparation of their documentation. The Bidding Commission considered beneficial to the process to extend the terms, in order to allow a higher number of participants into the process, benefiting the competition. Needless to say that one of the objectives that the monitoring process wanted to achieve was to allow as many competitors as possible.

b) Facilitate and coordinate the access and delivery, in a timely manner, of all information that is deemed pertinent towards the efficient execution of this covenant as requested by CLD/TI;

As mentioned before, the Secretariat of CONATEL, who also performed as Secretariat of the Bidding Commission, was responsible to coordinate the access and delivery of the information. CLD/TI was never denied access to any related information. Being that the Secretariat had to fulfill the same role with the members of CONATEL and the Commission, the information that was delivered was the same for all parties involved, although its deliverance. Nevertheless, the information produced was accurate, reflecting in a truthful manner the activity held on the processes meetings.

c) Establish a clear channel for the dissemination of information, consolidated in the Presidency of the Commission and the Presidency of CONATEL or those that have been formally designated for this purpose, with the goal of protecting the process in the event of the release of privileged information;

The purpose of this clause is to promote the establishment of a sole figure responsible of disseminating information to the public. In fact, the dissemination of information was concentrated on three different officials, directed to specific publics. For instance, the President of CONATEL attended the media, the information directed to CLD/TI was managed by the Secretariat of the Bidding Commission, and the information directed to the companies by both the Secretariat and an external advisor hired specifically for the process. By establishing the roles clearly, one may establish responsibilities more efficiently providing transparency to the process.

d) Request that all of the people who have access to confidential information subscribe to the “Covenant of Confidentiality” with CONATEL and SNT;

The members of the Bidding Commission, who have not been requested to sign the Code of Conduct signed by the personnel of CONATEL and SNT, signed this instrument. Furthermore the advisors attached to their respective formal delegates to the Bidding Commission where obligated to subscribe the Covenant of Confidentiality.

The information related to the process was classified in two distinct categories. Most of the information was considered free for disclosure and measures where stated to provide public access to its contents. In a lesser extent, the signature of a Covenant of Confidentiality by all members of the Bidding Commission, guarded information that should be kept confidential and access to such information was restricted to them. All other public officials involved, as well as contracted advisors signed the Code of Conduct that also included a Confidentiality Clause.

The Bidding Commission is conformed by the President of CONATEL, who also presides the Commission, and the representatives of the National Telecommunication Secretariat, the Telecommunication Superintendence, the Federation of Production Chambers, the Armed Forces Chief of Command and the National Council of Modernization. Furthermore, to the meetings were invited the necessary staff of the SNT depending on the issues discussed, and the permanent presence of representatives of CLD/TI.

The CONATEL is conformed by the Nation’s Vice-President, the Army’s Commander in Chief, the National Secretary of Telecommunications, the Telecommunications Superintendent, the representative of the Federation of Production Chambers, and it is presided by a functionary designated by the Nation’s President. The presence of CLD/TI’s representatives depended on the inclusion of issues related to the PCS’s bidding process.

e) To convene meetings, jointly with CLD/TI, with the objective of garnering the interest and commitment of the potential bidders in the auctions of WLL, in order to have them subscribe the Integrity Pacts, the text of which is in Annex V of the present covenant. The signing of this Pact for the process of PCS is voluntary for the bidders and will be applicable to the process only if all bidders dully sign the pact. Furthermore, CONATEL commits itself to the drafting of an Integrity Pact for PCS with CLD/TI, to be included as mandatory for all bidders, as part of the bidding documents for the PCS auction process; as well as, to

fully implement all of the processes, procedures and steps in order to monitor the principles described within them;

Refer to the clause e) of the section “Obligations of the Parties”, page 12.

f) Comply with the procedures established in the “Procedures for Transparent Auctions”.

As mentioned before, the “Procedures for Transparent Auctions” guidelines were incorporated by CONATEL for this process. These principles included the publication of the Bidding Documents on the Internet, through CONATEL’s home page, the inclusion of the Integrity Pacts on the processes (through the aforementioned differentiated procedures), recommendations on the procedures to regulate meetings between public personnel and the private companies participating on the bidding process, among others. CLD/TI is pleased to confirm that the majority of these principles were fulfilled according to the terms and conditions imposed through this instrument.

g) Comply with all of the commitments stipulated in the “Integrity Pacts”;

The application of this instrument has been completed on its initial phase, which includes signing and legalization of the document. The application of its terms is presently running for the sole company who bid on the auction, Andinatel.

The text of the Integrity Pact contemplated several steps that may be applied even after the band is awarded. The Integrity Pact emphasizes on preventing deviated activities from the companies participating on the auction, and particularly on those who may eventually be awarded with the bands. Therefore, the role of CLD/TI may be extended past the terms stated on the Covenant.

The responsibilities directed to CONATEL/SNT on the Integrity Pact emphasize on the obligation of rejecting any irregular proposition from an interested party to modify the process for particular benefit.

h) Approve and sign, jointly with CLD/TI, to the Proceedings for the Finalization of the Covenant, the format which is in Annex III;

The parties will subscribe the aforementioned document, once the concurring elements described on it are fully completed. The subscription of this document, and its subsequent legalization, represents that the parties have fulfilled their responsibilities and they accept the culmination of their legal relationships, including any economical responsibility.

i) Submit a communiqué directed to CLD/TI regarding the level of satisfaction as related to the experience through this covenant within a span of fifteen (15) days following the delivery by CLD/TI of the final report related to the corresponding Auctioneering process;

The terms stated in this clause are applicable once CLD/TI completes and submits the present report.

k) In case of doubt, the ability to solicit independent expertise, as long as the regulations of confidentiality remain intact; and,

The own staff of CONATEL has advised the institution on most matters. Nevertheless, the Modernization National Council (CONAM) provided the services of an international advisor, with experience on this type of auction process, to permanently aid CONATEL and the Bidding Commission. The external advisor was subject to the terms of the Code of Conduct.

l) Collaborate with CLD/TI in all that is necessary in order to achieve the objective of the covenant.

6. RIGHTS OF THE PARTIES:

CLD/TI will have the following rights:

a) CLD/TI will have total independence and autonomy in the development of the activities that are relevant in achieving the objectives of this covenant. To this end, CLD/TI possess the ability to deliver any observation deemed pertinent in relation to the transparency of the processes of auctioning the use, via concession, of bands and sub-bands of frequencies for the provision of telecommunication services to the President of CONATEL during the entire execution of the covenant;

CLD/TI provided recommendations throughout the development of the processes, and for this goal applied several procedures. The first manner under which these recommendations were issued was through the presence of representatives of CLD/TI in all the meetings held by all of the committees and commissions. During those meetings, CLD/TI's representatives observed the actions and decisions taken, while providing advice only in matters of procedure.

Furthermore, CLD/TI prepared communiqués directed to the commissions and committees analyzing the benefit of specific actions. These communiqués were prepared with the assistance of the external consultants. Finally, CLD/TI submitted questions on controversial issues that had to be answered officially and therefore became part of the record.

CLD/TI is pleased to report that during the whole process it was never subject to pressure or intimidation of any kind. It was allowed to participate in all the meetings without restriction and remain at all times independent and neutral.

b) After informing the President of CONATEL, CLD/TI, upon its own judgment, can make such observations public;

CLD/TI has not considered necessary to make any public announcement related to the development of the process. However, CLD/TI's opinion has been requested by several sources –particularly newspapers- to evaluate the process.

The finality pursued by CLD/TI is to provide the public with the necessary information to exercise their right to review the process, and complain in case of corruption. Even if the process is complete transparent, the public opinion is entitled to be aware of the terms and conditions under which public property is to be auctioned, and express through any way deemed necessary their discontent with the particular process.

d) Finally, the ability to retire, abiding by the policies of the covenant, in any stage of its execution, when the conditions needed to conduct the duties in a transparent, efficient, effective and independent manner are lacking.

During the process, CLD/TI did not phase any situation that entailed the need to apply this clause.

CONATEL and SNT will have the following rights:

a) Total independence and autonomy in order to carry out the necessary actions to implement and conclude the processes of auctioning the use, via concession, of frequency bands and sub-bands for the provision of telecommunication services, in accordance with the stated Ecuadorian legal norms, as well as those delineated in this covenant;

This clause clearly recognizes the exclusive right of CONATEL to conduct the auctioning process. Furthermore, it establishes its obligation to respect the effective legal framework and the bylaws specifically implemented by CLD/TI to these processes. Nevertheless, it was clearly stated that CONATEL would receive CLD/TI's advise, but would be solely accountable for its final decision, whether it followed CLD/TI's advise or not.

b) Demand that CLD/TI deliver the communiqués described in this covenant, accounting for the expenses in the required manner; and,

Attached to this final report there is a complete account of all the expenses incurred in this process.

c) Retire in the manner stipulated by the covenant in any stage of the execution of the covenant upon considering that CLD/TI has not fulfilled its commitments, and, to this end, duly notify CLD/TI of the aforementioned intention in written form.

During the process, CONATEL/SNT did not phase any situation that entailed the need to apply this clause.

PCS AUCTION PROCESS

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