

IN THE MATTER OF:

SMALL AND MEDIUM-SIZED ENTERPRISES: U.S. AND EU EXPORT ACTIVITIES, AND BARRIERS AND OPPORTUNITIES EXPERIENCED BY U.S. FIRMS, INV. NO. 332-509

AND

SMALL AND MEDIUM-SIZED ENTERPRISES: CHARACTERISTICS AND PERFORMANCE, INV. NO. 332-510

TESTIMONY OF MIGUEL ANGEL OLIVA, VICE PRESIDENT OF
PUBLIC RELATIONS AND CORPORATE AFFAIRS, HBO LATIN AMERICA GROUP
BEFORE THE U.S. INTERNATIONAL TRADE COMMISSION

MARCH 18, 2010

I AM MIGUEL OLIVA, VICE PRESIDENT OF PUBLIC RELATIONS AND CORPORATE AFFAIRS FOR HBO LATIN AMERICA, HEADQUARTERED IN CORAL GABLES FLORIDA. MY RESPONSIBILITIES INCLUDE THE STRATEGIC DEVELOPMENT OF THE COMPANY'S TELEVISION PROGRAMMING MARKETS IN LATIN AMERICA, BRAZIL, AND THE CARIBBEAN. THIS INCLUDES ARGENTINA, WHERE WE HAVE AN OFFICE IN BUENOS AIRES.

HBO LATIN AMERICA IS A MEDIUM-SIZE COMPANY OF 200 U.S. EMPLOYEES, WITH A FAMOUS NAME. WE LICENSE, DISTRIBUTE AND EXPORT THROUGHOUT LATIN AMERICA THE PAY PREMIUM TELEVISION CHANNELS HBO, CINEMAX, MAX PRIME, AND OTHERS. OUR PROGRAMMING ALSO INCLUDES BASIC CHANNELS WITH PAID ADVERTISING, SUCH AS A&E, ANIMAX, AND THE HISTORY CHANNEL. WE ARE AFFILIATED WITH THE LEADING U.S. ENTERTAINMENT COMPANIES HBO USA, TIME WARNER ENTERTAINMENT COMPANY, SONY PICTURES ENTERTAINMENT, AND OLE COMMUNICATIONS GROUP.

WE HAVE DEEP CONCERNS WITH THE THREAT TO OUR EXPORTS TO ARGENTINA'S TELEVISION MARKET, THE LARGEST IN LATIN AMERICA. THE THREAT IS FROM ARGENTINA'S AUDIOVISUAL COMMUNICATIONS SERVICES LAW, OR THE "MEDIA LAW" FOR SHORT. THE EFFORTS OF U.S. PROGRAMMERS TO SOLVE SPECIFIC PROBLEMS WITH THE MEDIA LAW, FRANKLY, ARE NOT SUCCEEDING. AS A PRIVATE COMPANY WE ARE NO MATCH FOR THE ARGENTINE GOVERNMENT. WE NEED THE U.S. GOVERNMENT TO DIRECTLY ENGAGE THE ARGENTINE GOVERNMENT TO PROTECT OUR EXPORTS BY ENFORCING AMERICA'S TREATY RIGHTS. IF THIS IS NOT DONE, I FEAR ARGENTINA'S MEDIA LAW WILL BE COPIED IN NEIGHBORING MARKETS, SUCH AS BRAZIL, VENEZUELA, AND COLOMBIA. THESE OTHER COUNTRIES ARE STUDYING ARGENTINA'S MEDIA LAW AND WATCHING THE U.S. GOVERNMENT'S RESPONSE.

THE MEDIA LAW ESTABLISHES TWO CLASSES OF PROGRAMMERS - DOMESTIC AND FOREIGN. IT TREATS THE TWO GROUPS DIFFERENTLY IN TERMS OF MINIMUM CHANNELS REQUIREMENTS, SCREEN QUOTAS, AND TAXES. IN THESE AREAS, THE LAW FAVORS DOMESTIC PROGRAMMERS OVER FOREIGN ONES. NEARLY ALL OF HBO LATIN AMERICA'S PROGRAMMING IN ARGENTINA IS AN EXPORT THAT ORIGINATES IN THE UNITED STATES, WHICH MAKES US A FOREIGN PROGRAMMER. THIS PUTS HBO LATIN AMERICA AT A SERIOUS COMPETITIVE DISADVANTAGE IN THE ARGENTINE MARKET BY WEAKENING OUR PRODUCT OFFERINGS, DECREASING OUR REVENUES, AND INCREASING OUR COSTS.

IN OTHER WORDS, THE MEDIA LAW VIOLATES BASIC NATIONAL TREATMENT PRINCIPLES. MY ARGENTINE COMPETITORS ARE GIVEN MAJOR COMPETITIVE ADVANTAGES OVER HBO LATIN AMERICA'S EXPORT SALES IN ARGENTINA.

LET ME BE SPECIFIC.

A CABLE OPERATOR HAS A LIMITED NUMBER OF CHANNELS ON ITS GRID, AND PROGRAMMERS COMPETE AND PAY FOR THEIR CHANNEL SPACE. ARTICLE 65 OF THE MEDIA LAW REQUIRES THAT CABLE OPERATORS CARRY A MINIMUM NUMBER OF DOMESTIC AND MERCOSUR CHANNELS. THIS, OF COURSE, REDUCES THE NUMBER OF CHANNELS AVAILABLE FOR FOREIGN PROGRAMMERS. THIS ALSO INCREASES CABLE OPERATORS' NEGOTIATING LEVERAGE WITH FOREIGN PROGRAMMERS. THIS TRANSLATES INTO HIGHER COSTS AS COMPARED TO DOMESTIC PROGRAMMERS. IT ALSO MEANS THAT A FOREIGN PROGRAMMERS' RELATIVELY LESS POPULAR PRODUCT LINES MAY NOT BE CARRIED AT ALL. WITH HIGHER COSTS AND A NARROWED PRODUCT LINE, FOREIGN PROGRAMMERS ARE PLACED AT A SIGNIFICANT COMPETITIVE DISADVANTAGE.

HBO LATIN AMERICA SPENDS AN ENORMOUS AMOUNT OF RESOURCES TO DEVELOP SOME OF THE WORLD'S BEST AND MOST POPULAR PROGRAMMING. THIS IS OUR MAIN COMPETITIVE ADVANTAGE. ARTICLE 67 OF THE MEDIA LAW DILUTES THIS HARD-EARNED ADVANTAGE BY ITS SCREEN QUOTA REQUIREMENT, WHICH DICTATES THAT A PROPORTION OF HBO LATIN AMERICA'S PROGRAMMING MUST CONSIST OF LOCAL ARGENTINE

MOVIES. THESE FILMS MAY OR MAY NOT SUIT HBO LATIN AMERICA'S PROGRAMMING AND MARKETING NEEDS, AND PURCHASING THEM REDUCES THE FUNDS AVAILABLE FOR HBO LATIN AMERICA'S PREFERRED MOVIE CHOICES. BY HANDICAPPING HBO LATIN AMERICA'S COMPARATIVE ADVANTAGE AND REDUCING ITS AVAILABLE RESOURCES, THE MEDIA LAW'S NATIONAL SCREEN QUOTA UNFAIRLY HINDERS U.S. EXPORTS.

CONCERNING HBO LATIN AMERICA'S BASIC TELEVISION PROGRAMS WITH PAID ADVERTISING, THE MEDIA LAW BLATANTLY DISCRIMINATES AGAINST FOREIGN PROGRAMMERS. THIS IS MOST OBVIOUS WITH RESPECT TO THE 5% TAX RATE THAT APPLIES TO FOREIGN PROGRAMMERS' ADVERTISING EXPENDITURES UNDER THE MEDIA LAW'S ARTICLE 96, WHILE ONLY A 3% TAX RATE APPLIES TO DOMESTIC PROGRAMMERS. THE BOTTOM LINE IS THAT HBO LATIN AMERICA IS SUBJECT TO ARGENTINE TAXES THAT ARE 66 PERCENT HIGHER THAN OUR ARGENTINE COMPETITORS'.

MOREOVER, THE NEW TAX SCHEME CREATED BY ARTICLE 94 OF THE MEDIA LAW MAKES ALL TYPES OF ADVERTISING CARRIED BY A FOREIGN PROGRAMMER SUBJECT TO TAX, EVEN SO-CALLED REGIONALLY-DIRECTED ADVERTISING WITH ONLY AN ACCIDENTAL SIGNAL SPILLOVER INTO ARGENTINA. THIS INCLUDES ADVERTISING NEVER INTENDED FOR THE ARGENTINE MARKET FOR PRODUCTS NOT EVEN SOLD IN ARGENTINA. THIS DOES NOT ARISE FOR DOMESTIC PROGRAMMERS WHERE ALL ADVERTISING IS DIRECTED AT THE ARGENTINE MARKET. THIS, OF COURSE, INCREASES FOREIGN PROGRAMMERS' COSTS IN A WAY THAT DOES NOT AFFECT

DOMESTIC PROGRAMMERS. OUR ADVERTISING THAT NEITHER ORIGINATES IN NOR IS INTENDED FOR THE ARGENTINE MARKET IS NEVERTHELESS TAXED BY ARGENTINA.

ADDITIONALLY, UNDER ARTICLE 83 OF THE MEDIA LAW, THE COST OF BUYING ADVERTISING FROM A DOMESTIC PROGRAMMER IS TAX DEDUCTABLE, BUT BUYING IT FROM A FOREIGN PROGRAMMER IS NOT. THIS HEAVILY SKEWS WHERE ADVERTISING TIME IS PURCHASED, WITH ADVERTISING REVENUE MOVING TO DOMESTIC PROGRAMMERS AND AWAY FROM HBO LATIN AMERICA. IN FACT, ADVERTISERS IN ARGENTINA ARE ALREADY INSISTING THAT HBO LATIN AMERICA LOWER ITS PRICES TO MAKE UP FOR THE TAX DISPARITY CREATED BY THE MEDIA LAW. THE LOSS OF REVENUE IS SUBSTANTIAL.

WE HAVE EXPRESSED THESE CONCERNS TO THE AUTHORITIES IN ARGENTINA, TO NO AVAIL.

THROUGH OUR SUBMISSIONS AND SEVERAL MEETINGS WITH USTR OFFICIALS, WE HAVE REQUESTED USTR TO HIGHLIGHT THE MEDIA LAW IN THE UPCOMING NATIONAL TRADE ESTIMATES REPORT IN ORDER TO FOCUS U.S. ACTION. WE HAVE ALSO MET WITH OFFICIALS FROM THE STATE DEPARTMENT AND THE DEPARTMENT OF COMMERCE. TOMORROW WE WILL BRIEF OUR CONGRESSIONAL REPRESENTATIVES ON THIS ISSUE.

OUR INVESTMENTS IN ARGENTINA SHOULD BE PROTECTED BY THE BILATERAL INVESTMENT TREATY BETWEEN THE UNITED STATES AND

ARGENTINA. NATIONAL TREATMENT IS SUPPOSED TO BE GUARANTEED UNDER THE BIT, BUT IT IS VIOLATED BY THE MEDIA LAW.

MY CONCERN WITH THE BIT IS PRACTICAL. I KNOW THAT HBO LATIN AMERICA COULD SUE THE GOVERNMENT OF ARGENTINA IN INTERNATIONAL ARBITRATION OVER THESE TREATY VIOLATIONS. BUT I ALSO KNOW THAT MULTIPLE OTHER BIT ARBITRATIONS AGAINST ARGENTINA HAVE NOT HELPED U.S. INVESTORS, EVEN THOUGH WON.

THE U.S. GOVERNMENT MUST THEREFORE ENGAGE IN DIRECT CONSULTATIONS WITH THE GOVERNMENT OF ARGENTINA ON THE MEDIA LAW. IF NO PROGRESS IS MADE, THE U.S. GOVERNMENT SHOULD INVOKE DIRECT CONSULTATIONS AND ARBITRATION WITH THE GOVERNMENT OF ARGENTINA UNDER THE BIT ON BEHALF OF ALL U.S. EXPORTERS OF TELEVISION PROGRAMMING. SO FAR, THERE HAS NEVER BEEN THIS TYPE OF BIT ENFORCEMENT BY THE U.S. GOVERNMENT. DIRECT INVOLVEMENT BY THE U.S. GOVERNMENT IS THE MAIN GOAL OF HBO LATIN AMERICA'S PARTICIPATION TODAY. IT IS WHAT WE HAVE ASKED FOR FROM THE GOVERNMENT OFFICIALS WE HAVE ALREADY MET WITH, AND, OF COURSE, WE WILL REQUEST THE SAME FROM OUR REPRESENTATIVES IN CONGRESS AS WELL.

THANK YOU, AND WE WOULD BE HAPPY TO ANSWER ANY QUESTIONS FROM THE COMMISSIONERS AND YOUR STAFF.