

TELECOM ARGENTINA SA
Form SC 13D
October 22, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D
Under the Securities Exchange Act of 1934

(Amendment No.)*

TELECOM ARGENTINA S.A.
(Name of Issuer)

Class B Ordinary Shares
(Title of Class of Securities)

879273209
(CUSIP Number)

Antonino Cusimano
Telecom Italia S.p.A.
Piazza degli Affari, 2
20123 Milan - Italy
+39 06 3688 1
(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications)

With a copy to:
Jeffrey M. Oakes, Esq.
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October 13, 2010
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. o

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*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No.
879273209

1 NAME OF REPORTING PERSONS

Telecom Italia S.p.A.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Italy

7 SOLE VOTING POWER

NUMBER OF SHARES
BENEFICIALLY OWNED BY
EACH REPORTING PERSON
WITH

8 SHARED VOTING POWER

36,832,4081

9 SOLE DISPOSITIVE POWER

10 SHARED DISPOSITIVE POWER

36,832,4081

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

36,832,408

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

8.35%

14 TYPE OF REPORTING PERSON

HC, CO

1 Telecom Italia S.p.A., together with Telecom Italia International N.V., exercises its rights over the Shares (as defined in Item 1. below) indirectly through Sofora Telecomunicaciones S.A. and other subsidiaries. The exercise of certain rights in Sofora Telecomunicaciones S.A. is governed by the Shareholders' Agreement (as defined in Item 4. below).

CUSIP No.
879273209

1 NAME OF REPORTING PERSONS

Telecom Italia International N.V.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

The Netherlands

7 SOLE VOTING POWER

NUMBER OF SHARES
BENEFICIALLY OWNED BY
EACH REPORTING PERSON
WITH

8 SHARED VOTING POWER

36,832,4082

9 SOLE DISPOSITIVE POWER

10 SHARED DISPOSITIVE POWER

36,832,4082

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

36,832,408

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

8.35%

14 TYPE OF REPORTING PERSON

HC, CO

2 Telecom Italia International N.V., together with Telecom Italia S.p.A., exercises its rights over the Shares (as defined in Item 1. below) indirectly through Sofora Telecomunicaciones S.A. and other subsidiaries. The exercise of certain rights in Sofora Telecomunicaciones S.A. is governed by the Shareholders' Agreement (as defined in Item 4. below).

CUSIP No.
879273209

1 NAME OF REPORTING PERSONS

Sofora Telecomunicaciones S.A.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Argentina

7 SOLE VOTING POWER

36,832,4083

NUMBER OF SHARES
BENEFICIALLY OWNED BY
EACH REPORTING PERSON
WITH

8 SHARED VOTING POWER

9 SOLE DISPOSITIVE POWER

36,832,4083

10 SHARED DISPOSITIVE POWER

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

36,832,408

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

8.35%

14 TYPE OF REPORTING PERSON

HC, CO

3 Sofora Telecomunicaciones S.A. exercises its rights over the Shares (as defined in Item 1. below) through its participation in Nortel Inversora S.A.

CUSIP No.
879273209

1 NAME OF REPORTING PERSONS

Nortel Inversora S.A.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Argentina

7 SOLE VOTING POWER

36,832,408

NUMBER OF SHARES
BENEFICIALLY OWNED BY
EACH REPORTING PERSON
WITH

8 SHARED VOTING POWER

9 SOLE DISPOSITIVE POWER

36,832,408

10 SHARED DISPOSITIVE POWER

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

36,832,408

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

8.35%

14 TYPE OF REPORTING PERSON

HC, CO

Item 1. Security and Issuer

The class of equity securities to which this statement relates is the Class B shares, P\$1.00 par value per share (the “Shares”), of Telecom Argentina S.A., an Argentinean corporation (the “Issuer”), a portion of which is represented by American Depositary Shares which are traded on the New York Stock Exchange (the “NYSE”). The principal executive offices of the Issuer are located at Alicia Moreau de Justo 50, 10th floor, 1107 Buenos Aires, Argentina.

Item 2. Identity and Background

The names of the persons filing this statement are Telecom Italia S.p.A., an Italian corporation (“TI”), Telecom Italia International N.V., a Dutch corporation (“TII”), Sofora Telecomunicaciones S.A., an Argentinean corporation (“Sofora”) and Nortel Inversora S.A., an Argentinean corporation (“Nortel”).

The address of the principal office of TI is Piazza degli Affari 2, 20123 Milan, Italy. The address of the principal office of TII is Strawinskylaan 1627, 1077 XX Amsterdam, The Netherlands. The address of the principal office of Sofora is Av. Eduardo Madero 900, 26th Floor, 1106 Buenos Aires, Argentina. The address of the principal office of Nortel is Alicia Moreau de Justo 50, 11th Floor, 1107 Buenos Aires, Argentina.

TI and its subsidiaries operate mainly in Europe, the Mediterranean Basin and South America. The TI group is engaged principally in the communications segment and, particularly, in the fixed and mobile national and international telecommunications segments, the television segment and the office products segment. TII, Sofora and Nortel are purely holding companies.

The name, business address, present principal occupation or employment, principal business address of such employer and citizenship of each director and executive officer of TI, TII, Sofora and Nortel is set forth on Schedule A.

During the last five years, except as described in the next paragraph, none of TI, TII, Sofora or Nortel and, to the best of their knowledge, none of the persons listed on Schedule A attached hereto, has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or has been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject, to federal or state securities laws or finding any violation with respect to such laws.

In December 2008 TI received a notice of commencement of proceedings for administrative offenses under articles 21 and 25, paragraphs 2 and 4 of Italian Legislative Decree 231/2001. Such notice was received following the investigation, by the Public Prosecutor of Milan, of events involving former TI employees and consultants charged with a series of crimes, including – among others - the offense, under Legislative Decree 231/2001, of bribing public officials to obtain confidential information. In May 2010 TI agreed to pay a fine of Euro 400,000 pursuant to art. 63 of Legislative Decree 231/2001 (which provides for an administrative “plea bargaining” procedure). As a result of agreeing to pay the fine TI settled its position in this proceeding without denying or admitting the administrative offenses alleged in the notice referred to above and was dismissed as a defendant by the Milan Court.

Item 3. Source and Amount of Funds or Other Consideration

The consideration for the transfer of Sofora shares representing an additional 8% of such shares under the Share Purchase Agreement (as defined below) was (i) \$1, and (ii) the execution of certain agreements between the TI group and various entities of the Werthein group (the “Werthein Group”), including inter alia (a) the Amended and Restated Shareholders’ Agreement (as defined below), (b) a settlement agreement relating to certain previous disputes between such parties in relation to their interests in the Issuer, and (c) a certain call option agreement providing for call options

in favor of TII over the remaining shares of Sofora, that were terminated upon completion of the Sofora Share Transfer (as defined below). Previously outstanding call options granted by the Wertheim Group to TII were also terminated in connection with entering into these new arrangements.

Item 4. Purpose of Transaction

On August 5, 2010 TII and certain entities of the Wertheim Group (the “Sellers”) entered into a share purchase agreement (the “Share Purchase Agreement”) under which the Sellers agreed to sell 35,176,160 common shares of Sofora, representing 8% of its stock capital, to TII (the “Sofora Share Transfer”), subject to the satisfaction of certain conditions precedent, including the receipt of necessary regulatory approvals. Following receipt of the necessary regulatory approvals on October 13, 2010, the Sofora Share Transfer was completed and TII and TI jointly became the owners of 58% of the shares of Sofora (the “TI Control Event”), thereby acquiring the right to appoint the majority of directors in Sofora, Nortel and the Issuer, in accordance with the Shareholders’ Agreement, as defined below. A copy of the Share Purchase Agreement is attached hereto as Exhibit 2 and incorporated herein by reference.

On August 5, 2010 TI, TII and the Wertheim Group, also entered into the 2010 Amended and Restated Shareholders’ Agreement (the “Amended and Restated Shareholders’ Agreement”), amending the 2003 Amended and Restated Shareholders’ Agreement previously in force among the parties and regulating certain matters as to the corporate governance of Sofora, Nortel and the Issuer. A copy of the Amended and Restated Shareholders’ Agreement is attached hereto as Exhibit 3 and incorporated herein by reference.

On October 13, 2010 TI, TII and the Wertheim Group entered into an amendment to the Amended and Restated Shareholders’ Agreement (the “First Amendment to the Shareholders’ Agreement” and, together with the Amended and Restated Shareholders’ Agreement, the “Shareholders’ Agreement”), attached hereto as Exhibit 4, providing for certain required governance arrangements agreed with the Argentinean Antitrust Authority.

In accordance with the Shareholders’ Agreement, the Wertheim Group and TI and TII have the following rights under the Shareholders’ Agreement.

Prior to the TI Control Event the Wertheim Group had the right to appoint three out of six Board members and TI had the right to appoint the remaining three Board members of Sofora. Following the TI Control Event, TI may nominate five of the nine Board Members of Sofora. Decisions are to be made by the majority of directors present at each meeting. The Wertheim Group also has the right to nominate the Chairman of the Internal Auditors Committee (Comisión Fiscalizadora) of Sofora.

With respect to Nortel, until the occurrence of the TI Control Event each of the Wertheim Group and TI had the right to appoint two out of six Board members and the Wertheim Group and TI had the right to jointly nominate the fifth director. The sixth director was to be nominated by the Class A and Class B preferred shareholders of Nortel, as long as they had such rights in accordance with the terms and conditions of issuance of the preferred shares (see Item 5(a) below). Following the TI Control Event TI may nominate four of the seven Board Members of Nortel. Decisions are to be made by the majority of directors present at each meeting. In case of a tie, the Chairman, nominated by TI, shall cast the deciding vote. The Wertheim Group will nominate the Chairman of the Audit Committee (Comité de Auditoría) of Nortel.

With respect to the Issuer, as a general rule, Nortel has the right to appoint five directors and the minority shareholders have the right to nominate one director. Until the occurrence of the TI Control Event, three of the five Board members to be nominated by Nortel were to be appointed by TI and the remaining two by the Wertheim Group. Following the TI Control Event, it is intended that the Issuer’s Board of Directors shall consist of seven members, six of which shall be nominated by Nortel. TI has the right to appoint four of the six Nortel nominees. Decisions are to be made by the majority of directors present at each meeting. In case of a tie, the Chairman, nominated by TI, casts the deciding vote. The Wertheim Group has the right to appoint the Chairman of the Audit Committee of the Issuer. The Shareholders’ Agreement also provides that the resolutions of the Audit Committee shall be taken by the unanimous vote of its members.

The Chairman of the Issuer's Board of Directors (i) will be an Argentine professional of recognized reputation; and (ii) will not have been appointed as director or officer by any direct or indirect competitor of the Issuer in the Argentinean telecommunications market within the previous 12 months from his appointment.

On October 13, 2010, all the conditions precedent provided under the Share Purchase Agreement were satisfied, and the Sofora Share Transfer was completed. Accordingly, as of the date hereof, TI and TII jointly hold 58% of Sofora share capital and the Werthein Group holds 42% of the Sofora share capital. The consideration for the Sofora Share Transfer is described in Item 3. above. Following completion of the Sofora Share Transfer and due to the rights granted under the Shareholders' Agreement, TI is deemed to indirectly control the Issuer.

The Shareholders' Agreement also establishes a Steering Committee (Consejo de Dirección) for the Issuer, which will be composed of four members, of which two will be appointed by TI and two by the Werthein Group. The Steering Committee will be in charge of resolving matters concerning the Issuer's business plan, annual budget and general employee compensation policy for the Issuer. The Steering Committee will validly resolve upon any matter with the affirmative vote of the majority of the members. If a matter is not approved by the majority of its members, the Board of Directors will resolve upon such matter.

In addition, in accordance with the First Amendment to the Shareholders' Agreement, the functions of the Steering Committee of the Issuer have been extended and shall include the submission to the Steering Committee of (i) the marketing plans of any business unit of the Issuer and Telecom Personal S.A. ("TP", a 99.99% Issuer owned Argentinean corporation, active in the provision of mobile telecommunications services) and bids to be presented in public tenders (licitaciones públicas), exceeding Argentinean Pesos \$ 5 million, in order to determine that the same do not violate the Argentinean Antitrust law; (ii) quarterly, the commercial offers to customers launched by the Issuer and TP during the prior 3-month period, in order to assess if the same comply with the Argentinean Antitrust law; and (iii) the appointment of the officer of the Issuer and TP responsible for Marketing and the officer responsible for the landline business unit (Telefonia Fija) of the Issuer for its approval. Such officers shall be persons who, in the preceding 36 (thirty-six) months, did not serve as a board member or officer of any company established in Argentina which is directly or indirectly controlled by Telefónica S.A.

Pursuant to the Shareholders' Agreement, the meetings between the TI group and the Werthein Group, before any shareholders or Board of Directors meeting of Sofora, Nortel, the Issuer or any of its subsidiaries, that will deliberate on matters (i) to be submitted to the shareholders meeting or (ii) connected with the preferred shareholders of Nortel, remains substantially as set forth in the 2003 Amended and Restated Shareholders' Agreement, but now excludes resolutions to be adopted by certain non-executive committees. Two members appointed by TI and one member appointed by the Werthein Group will attend the prior meetings and the decisions will be taken through the affirmative vote of the majority of its members.

The Werthein Group will maintain certain veto rights upon matters, substantially as provided for in the 2003 Amended and Restated Shareholders' Agreement, as follows:

- (i) the approval of any amendment to the by-laws, other than the amendments expressly set forth in the Shareholders' Agreement;
- (ii) dividend policy;
- (iii) any capital increase or decrease, except for any capital increase or decrease connected to any possible debt restructuring;
- (iv) changing the location of the headquarter offices;
- (v) any acquisition of subsidiaries and/or creation of subsidiaries;
- (vi)

the sale, transfer, assignment or any other disposition of all or substantially all of the assets or any of its subsidiaries of the Issuer;

(vii) decisions relating to the establishment of joint ventures;

(viii) constitution of any charges, liens, encumbrance, pledge or mortgage over assets, exceeding in the aggregate the amount of US\$20,000,000;

- (ix) any change of external auditors, to be chosen among auditors of international reputation;
- (x) any related party transaction which is not carried out according to usual market conditions, exceeding the amount of US\$5,000,000, with the exception of (i) any correspondent relationships, traffic agreement and/or roaming agreements with any national and/or international telecommunications carriers/operators, including the establishment, expansion or amendment of such correspondent relationships with any new telecommunications carriers; and (ii) any transaction connected with the debt restructuring;
- (xi) any extraordinary transaction involving the Issuer group, exceeding the amount of US\$30,000,000, except for any operation not connected with the debt restructuring of the Issuer group; and
- (xii) any change to the rules of the Steering Committee, the Regulatory Compliance Committee or the Comité de Auditoría; and the creation, changes or dissolution of any committee of the Issuer group with similar functions.

Certain of these veto rights terminate if the Wertheim Group's shareholding in Sofora falls below 39% and terminate in their entirety if such share holding falls to 24% or below.

Additionally, pursuant to the Shareholders' Agreement, the term in office of the members of the Board of Directors of the companies of the Issuer group shall be of three (3) years and the maximum number of the members of the Board of Directors of the Issuer shall be increased from nine (9) to eleven (11).

Except as set forth in this Statement, none of TI, TII, Sofora or Nortel has any plan or proposals that relate to or would result in any of the transactions described in subparagraphs (a) through (j) of Item 4 of Schedule 13D.

Item 5. Interest in Securities of the Issuer

(a) Following completion of the Sofora Share Transfer, TI holds 142,903,150 shares and TII holds 112,124,010 shares of Sofora, representing an aggregate 58% of the Sofora shares. The Wertheim Group owns the remaining 42% of the Sofora shares.

Sofora owns 5,330,400 ordinary shares of Nortel, representing 100% of the Nortel ordinary stock and 67.79% of the Nortel capital stock. The outstanding Class A preferred shares and the Class B preferred shares of Nortel represent respectively 13.51% and 18.70% of the capital stock of Nortel. The ordinary shares are the only class of full voting stock. In the event of certain payment defaults or breaches of covenants, the Nortel preferred shareholders may elect one director to the Nortel's board of directors and obtain voting rights. Currently, the Class A preferred shareholders have the right to elect one member of Nortel's board of directors and a general right to vote for all matters other than the election of all other board members, and Sofora therefore owns 83.38% of the voting stock of Nortel. The Class B preferred shares have no voting rights and the American Depositary Receipts representing them are listed on the NYSE. Sofora does not own any such Class B preferred shares.

In its turn, Nortel owns 502,034,299 Class A ordinary shares of the Issuer (representing 100% of this class and 51% of the Issuer's total capital stock) and 36,832,408 Class B ordinary shares of the Issuer (representing approximately 8.35% of this class and 3.74% of the Issuer's total capital stock). In aggregate Nortel owns 538,866,707 ordinary shares, representing approximately 54.74% of the capital stock and of the voting power of the Issuer. A portion of the Class B ordinary shares of the Issuer are listed on the NYSE and trade in the form of American Depositary Receipts.

Except as set forth in this Item 5(a), none of TI, TII, Sofora, Nortel, and, to the best of its knowledge, any persons named in Schedule A hereto owns beneficially any Shares.

- (b) Nortel has sole power to vote and to dispose of the Shares.
- (c) Inapplicable.
- (d) Inapplicable.

(e) Inapplicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

As described in Item 4 above, the Shareholders' Agreement regulates several corporate governance matters related to the Issuer group.

Except for the Shareholders' Agreement, to the best knowledge of TI, TII, Sofora and Nortel there are no contracts, arrangements, understandings or relationships (legal or otherwise), including, but not limited to, transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, between the persons enumerated in Item 2, and any other person, with respect to any securities of the Issuer, including any securities pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities other than standard default and similar provisions contained in loan agreements.

Item 7. Material to be Filed as Exhibits

Exhibit 1: Joint Filing Agreement dated as of October 22, 2010 between TI, TII, Sofora and Nortel.

Exhibit 2: Share Purchase Agreement dated as of August 5, 2010 between TII and the Wertheim Group.

Exhibit 3: Amended and Restated Shareholders' Agreement dated as of August 5, 2010 between TI, TII and the Wertheim Group.

Exhibit 4: First Amendment to the Amended and Restated Shareholders' Agreement dated as of October 13, 2010 between TI, TII and the Wertheim Group.

Exhibit 5: Press Release dated as of October 14, 2010, issued by TI in relation to the Sofora Share Transfer.

