MERGERS (TELEVISION): THE VIA DIGITAL CASE

Subject: Mergers
National law

Industry: Television, broadcasting

Parties: Via Digital SA
Sogecable SA
(Controlling parties are indicated in the report below)

Source: Commission Statement IP/02/1216, dated 16 August 2002

(Note. Although this case originated with a notification to the Commission under the Mergers Regulation, the Commission has decided to accede to a request by the Spanish Government, in accordance with the terms of the Regulation itself, that the matter should be handled at national level and under national competition law. This is not unreasonable, given that the effects of the merger will be felt almost exclusively in Spain. At the same time, the economic effects of the merger may be farther flung, since some of the controlling parties are from France. Thus, there may be two different concepts of the "Community interest" in a case of this sort.)

The Commission has decided to grant the referral requested by the Spanish Competition Authorities with regard to the integration of the two satellite digital television platforms operating in Spain. The Spanish authorities according to this State's national competition law will therefore assess the operation, which threatens to bring about anti-competitive effects in a number of markets within Spain.

On July 3, the Commission received a notification under the Merger Regulation requesting clearance for the integration of DTS Distribuidora de Televisión Digital S.A. (Vía Digital), the second pay TV operator in Spain, in Sogecable S.A., the dominant pay TV operator in Spain, by way of exchange of shares. The former is controlled by the Spanish undertaking Grupo Admira Media S.A., belonging to the Telefónica group. The latter is controlled jointly by the Spanish media group Promotora de Informaciones S.A. (Prisa) and Groupe Canal + S.A., belonging to Vivendi Universal. According to the notification, after the merger Sogecable will continue to be controlled by Prisa and Canal+, while Telefónica will hold a significant participation in the merged entity.

On 12 July, the Spanish government requested the Commission, according to article 9(2)(a) of the Merger Regulation, to refer the case to its competition authorities on the basis that the merger threatens to create a dominant position impeding competition in distinct markets within Spain.

The Commission's review of the case confirmed that the concentration would threaten to create or strengthen a dominant position in the following markets geographically limited to Spain: pay TV, where the two parties are currently the two largest competitors and have combined market shares of around 80% (in terms of number of subscribers) and 80-95% in terms of sales; acquisition of exclusive rights for premium films and acquisition and exploitation of football matches in which Spanish teams participate (these TV contents are the main drivers for customers that decide to subscribe to a pay TV), other sports and sale of TV channels.

The Commission investigated further the effects of the transaction on several telecommunication markets, such as the provision of services of Internet access, services of fixed telephony or provision of infrastructures, and also took into consideration Telefónica's developing activities in pay TV (in particular, its project Imagenio, which will provide pay TV services, Internet access and fixed telephony through ADSL). The investigation showed that the creation of a structural link between the dominant operators in pay TV (and audiovisual content) and telecommunications in Spain risks a strengthening of Telefónica's dominant position in a number of telecommunication markets.

The Commission reached the conclusion that, in this case, given the national scope of the markets affected by the transaction, the Spanish Authorities were particularly well placed to carry out a thorough investigation of the operation, and that it was therefore appropriate to refer the case to Spain. The Spanish authorities will now assess the transaction under their national competition law. According to the Merger Regulation, the publication of any report or the announcement of the findings of the examination of the concentration by the Spanish Authorities shall take place not more than four months after the Commission's referral.

Sogecable is a Spanish company whose principal areas of business are the operation of terrestrial television (Canal+ analogue) and direct-to-home satellite pay television services (Canal Satélite Digital), the production and distribution of films, the acquisition and sale of sports rights and the provision of technology services. Sogecable is controlled by Prisa (Promotora de Informaciones S.A., the Spanish media group, which publishes El País and Cinco Días), and by Canal + SA.

Vía Digital offers pay TV via satellite in Spain and is controlled by Telefónica through Admira Media. The remaining capital is divided among institutional shareholders, mainly TV operators (Televisa, Canal 9, Direct TV, TVG, TVC, Telemadrid). ■

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