[ES] Merger Affecting the Audio-Visual Sector Approved

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The Spanish Government has recently approved the merger of two of the main Spanish banks, Banco Bilbao Vizcaya (BBV) and Argentaria. This merger affects several relevant markets, including the audio-visual market, in which both banks directly or indirectly participate.

The Spanish Government has approved this merger acting as the national competition authority with responsibility for the assessment of mergers that do not have European dimension (Arts. 14 to 18 of the 1989 Defence of Competition Act).

The Government has attached to its decision some conditions and obligations intended to minimise the anti-competitive effects of the merger in some of the markets affected by the operation. The Government has set restrictions to the simultaneous participation of the BBVA in more than one leading enterprise in certain strategic markets, including the markets for cable services, radio, free-to-air TV, pay-TV and TV rights. The goal of the Government is to avoid that potential competitors in some key markets are jointly or solely controlled by the same group, which could co-ordinate the behaviour of enterprises that should otherwise be competing against each other.

According to the limits set by the Government, the BBVA may only have more than 3% of the share capital in one of the five most important enterprises in any of those markets, and it may just appoint members of the board of directors of that same and only enterprise. When applying these limits, the Government will take into account any direct or indirect participation of the BBVA in any leading enterprise in the abovementioned markets.

The limits applied by the Government to this merger are the same it had imposed in July 1999 to the merger between Banco Santander and Banco Central Hispano. While that merger did not affect the audio-visual market the BBVA merger now does: Argentaria is one of the main shareholders of Telefónica (the Spanish incumbent telecommunications operator, which is the main shareholder of the terrestrial free-toair broadcaster Antena 3 TV and of the satellite digital pay-TV platform Vía Digital, and which also controls 40% of Audiovisual Sport, the company that manages the TV rights of the Spanish Football League);

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The BBV is the main shareholder of Telefónica and it is also one of the main shareholders of Sogecable (which manage a terrestrial pay-TV service -Canal Plus- and a satellite digital pay-TV platform -Canal Satélite Digital-; and it also owns 40% of Audiovisual Sport).

According to the limits set forth by the Government in its decision, the new BBVA will have to reduce its participation in Sogecable or in Telefónica, which compete against each other in the pay-TV market.

This merger must not only comply with the limits imposed by the Government applying general competition law but the merging companies must also respect the specific limits to media ownership set forth by the 1988 Private TV Act. According to these limits, a media undertaking shall only hold, directly or indirectly, shares in one licensee, and this holding shall not exceed 49% of the share capital. The authority with the responsibility for applying these limits, the Ministerio de Fomento (Ministry of Development) has declared that the BBVA could be holding shares directly in one licensee (Sogecable) and indirectly in a second one (Antena Tres, whose main shareholder is Telefónica, in which the BBVA has a controlling stake). This would mean that the BBVA would be breaching the limit that forbids an enterprise to hold shares in more than one licensee-holder. In order to comply with this limit, the BBVA would have to sell its shares in Sogecable or in Telefónica.

Acuerdo de 3 de Marzo de 2000 por el que, conforme a lo dispuesto en el artículo 17 b) de la Ley 16/1989, de 17 de julio de 1989, de Defensa de la Competencia, se decide subordinar a la observancia de determinadas condiciones la aprobación de la operación de concentración económica consistente en la fusión por absorción de Argentaria Caja Postal y Banco Hipotecario, S.A., por el Banco Bilbao Vizcaya, S.A.

Governmental Decision of 3 March 2000.

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