[ES] Competition Authorities to Assess Merger between Digital Satellite TV Platforms

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- Canal Satélite Digital, whose main shareholder is Sogecable, a company jointly controlled by Canal Plus (a subsidiary of Vivendi Universal) and PRISA (the main Spanish multimedia group). Canal Satélite Digital has 1.2 million subscribers. Moreover, Sogecable operates an analogue terrestrial pay-TV channel, which has approx. 800,000 subscribers.

- Vía Digital, whose main shareholder is the Spanish telecommunications incumbent, Telefonica (48%). Vía Digital has approx. 800,000 subscribers.

In May 2002, Sogecable and Vía Digital reached an agreement to merge. According to this agreement, the former would become integrated with the latter by means of the exchange of shares. Once the proposed operation would be carried out, the stakes of Vía Digital, PRISA and Canal Plus would be equal, although PRISA and Canal Plus would keep joint control of the company.

The new Sogecable would have more than 80% of the current pay-TV subscribers in Spain. Moreover, it would be backed by the two biggest multimedia groups in Spain, PRISA and Telefonica, which are very active in neighbouring markets, such as: free-to-air television; the acquisition of television rights for sports events and films; film and television programme production; radio broadcasting; press editing and the provision of telecommunications services. This proposed concentration could therefore strengthen the dominant position of Sogecable in the payTV market, and it could lead to a vertical integration that could make entry into the market too difficult for new companies. However, the companies involved argue that the operation has to be assessed within the context of the crisis in the pay-TV sector in the European Union, which has led to the winding-up of several companies. Both Vía Digital and Sogecable were suffering heavy losses, and they claim that the merger is necessary for their survival.

This proposed merger will only become effective if the authorities consider that it complies with both competition law and sector-specific media ownership limits.

As regards competition law, the proposed merger has a Community dimension: according to Council Regulation (EEC) No. 4064/1989 of 21 December 1989 on the control of concentrations between undertakings (the EC Merger Regulation), the relevant authority would usually be the European Commission. However, the

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Spanish Government requested the European Commission, on the basis of Article 9.2 of the EC Merger Regulation, to refer the case to the Spanish competition authorities. In August 2002, the Commission reached the conclusion that, given the national scope of the markets affected by this operation, the Spanish competition authorities should now assess the transaction under national competition law.

In August 2002, notice of the case was then communicated to the Spanish Ministry of the Economy, which has asked for the advice of its Servicio de Defensa de la Competencia (Protection of Competition Unit) and of the Comisión del Mercado de las Telecomunicaciones (CMT, Telecommunications Market Commission, the independent electronic communications regulator). Both have highlighted in their respective reports that the merger could hinder competition in several relevant markets, such as those of premium films and sports rights, the provision of broadband audiovisual services, the provision of technical and administrative services for pay-TV or the production and commercialisation of theme-specific channels. The main concern expressed by those bodies is that the new platform could abuse its dominant position in relation to television rights sellers (such as football clubs), independent programmers, competing pay-TV platforms or end-users. Nevertheless, these authorities acknowledge that the economic situation of the pay-TV sector is currently very complicated.

The Tribunal de Defensa de la Competencia (TDC, Protection of Competition Court, an independent competition body) will now have to issue a non-binding opinion, and the Council of Ministers will adopt the final decision before the end of November, either authorising (in some cases subject to certain conditions which counterbalance possible restrictive effects) or prohibiting the operation.

This merger shall not only comply with the limits imposed by the Government in applying general competition law; the merging companies must also respect the specific limits on media ownership, such as those established by the 1988 Private Television Act (which regulates national and regional terrestrial television) or by the 1997 Act on the incorporation into Spanish law of EC Directive 95/47 (which deals with the provision of conditional access services for pay-TV and with the relationship between digital pay-TV platforms and independent broadcasters).

"Commission refers the assessment of Vía Digital's merger with Sogecable to the Spanish Competition Authorities.", Press Release of the European Commission of 16 August 2002, IP/02/1216

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Informe al Ministerio de Economía sobre la operación de concentración entre Vía Digital y Sogecable elaborado por la Comisión del Mercado de las Telecomunicaciones en respuesta a la solicitud formulada por el Ministro al amparo del art. 1.2.j) de la Ley 12/1997

Report of the CMT to the Ministry of Economy on the proposed merger between Vía Digital and Sogecable

Informe del Servicio de Defensa de la Competencia sobre el asunto N-280, Sogecable/Vía Digital

Report of the Protection of Competition Unit on case N-280 Sogecable/Vía Digital

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