[ES] Government's Conditional Approval of Merger of Leading Digital-TV Platforms

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On 29 November 2002, the Spanish Council of Ministers decided to approve the proposed merger between Sogecable and Via Digital, the companies that manage the two leading Spanish digital pay-TV platforms. The case had been referred to the Spanish authorities by the European Commission at their request in August 2002 (see IRIS 2002-9: 8).

The company resulting from the merger will be controlled by the two main partners of Sogecable, Canal Plus (a subsidiary of Vivendi Universal) and PRISA (the main Spanish multimedia group), and by the main stakeholder of Via Digital, the Spanish telecommunications incumbent, Telefónica, which is also active in several media markets. Figures from 2002 indicate that the new Sogecable will serve 2.5 million digital homes and more than 80% of pay-TV subscribers. The companies had argued that the merger was justified given the tough conditions facing all European television operators and the heavy losses incurred by both Sogecable and Via Digital.

The Government adopted its decision after having received the non-binding opinion of the competition authority, the Tribunal de Defensa de la Competencia (Office for the Protection of Competition, TDC). Following partly the advice of the TDC, the Council of Ministers approved the merger after imposing a list of 34 conditions to the deal.

Some of the most stringent conditions prevent the cost of the merger from being passed on to current subscribers; impose price controls on the new platform for the next four years; restrict the length of the contracts that Sogecable may sign with Hollywood Majors or with Spanish soccer clubs; and prohibit Sogecable from acquiring exclusive rights for the transmission of premium content via UMTS or ADSL. It is also prohibited for Sogecable to reach strategic agreements with Telefonica's subsidiaries or to benefit them when selling content, in order not to strengthen the dominant position of the latter in neighbouring electronic communications markets. Sogecable must also allow third parties to distribute its theme-specific channels. It will not be permitted to have exclusive rights to channels produced by the largest US studios or international producers and will be obliged to grant independent programmers access to its platform under reasonable, transparent and non-discriminatory conditions.

In principle, the conditions imposed upon the parties shall apply for a period of five years. The Servicio de Defensa de la Competencia (Protection of Competition Unit, SDC) of the Ministry for Economy will oversee the implementation of the Decision adopted by the Council of Ministers, while the independent electronic communications regulator, the Comisión del Mercado de las Telecomunicaciones (Telecommunications Market Commission, CMT) will publish annual reports on the compliance of these conditions by the merged company, and will have responsibility for solving some conflicts which may arise between the new Sogecable and third parties.

The parties to the merger must also comply with sector-specific media ownership limits. According to Article 19 of Act 10/1988 on Private Television, an undertaking which holds shares in a national terrestrial television concessionaire is not allowed to have holdings in any other television concessionaire. Telefonica will now have holdings in the national terrestrial television concessionaire Sogecable and in the national free-to-air terrestrial television concessionaire, Antena 3 TV, so it will have to divest itself of one of these stakes within a year.

The decision of the Council of Ministers has received a mixed response: the free-to-air television concessionaire, Telecinco and the cable operators considered that the Government had allowed the creation of a pay-TV monopoly, while the parties to the merger claimed that the conditions were too stringent. The latter had two months to present a revised business plan, informing the SDC about how they intended to implement these conditions. On 29 January 2003, they finally decided to go ahead with the merger and gave the SDC the information required, but they have said that they will challenge five of the conditions imposed by the Government before the Supreme Court.

Acuerdo del Consejo de Ministros de 29 de noviembre de 2002, por el que, conforme a lo dispuesto en la letra b) del apartado 1 del artículo 17 de la Ley 16/1989, de 17 de julio de 1989, de Defensa de la Competencia, se decide subordinar a la observancia de condiciones la operación de concentración económica consistente en la integración de DTS Distribuidora de Televisión por Satélite, S.A. (Vía Digital) en Sogecable, S.A.(Sogecable)

Decision of the Council of Ministers of 29 November 2002, by means of which some conditions are imposed upon the merger agreement between Via Digital and Sogecable

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decide subordinar a la observancia de condiciones relativas al mercado de derechos de retransmisión de acontecimientos futbolísticos la operación de concentracion económica consistente en la integración de DTS Distribuidora de Televisión por Satélite, S.A. (Vía Digital) en Sogecable, S.A. (Sogecable)

Decision of the Council of Ministers of 29 November 2002, by means of which some conditions relating to the market of acquisition of soccer television rights are imposed upon the merger agreement between Via Digital and Sogecable

Informe del Tribunal de Defensa de la Competencia sobre el asunto N-280, Sogecable/Via Digital, 13 de noviembre de 2002

http://www.mineco.es/tdc/Concen.Economicas/tdccoec74.htm

Report of the Office for the Defence of Competition on Case N-280 Sogecable/Via Digital, 13 November 2002