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**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

# MEDIA MERGERS ROUNDTABLE

1. Under the U.S. antitrust laws and the enforcement policy of the U.S. antitrust agencies, mergers in the media sector are, with one exception discussed below, analyzed in the same manner as other mergers. Thus, there is no special approach to preserving competition in the review of media mergers. This paper will first discuss the handling of market definition issues in recent media merger cases. It then reviews the treatment of plurality and diversity matters by the sectoral telecommunications regulator in the United States, the Federal Communications Commission. It concludes with a brief description of the Newspaper Preservation Act.

## 1. Market Definition

### *1.1 Echostar/DirecTV*

2. The U.S. Department of Justice recently considered the issue of market definition in media markets during its investigation of the proposed merger of the Echostar and DirecTV direct broadcast satellite services. On October 28, 2001, General Motors Corp. agreed to sell Hughes Electronics Corporation, the owner of DirecTV, to Echostar Communications Corp. for approximately $26 billion in cash and stock. DirecTV and Echostar are essentially the only two direct broadcast satellite (ADBS@) distributors of multichannel video programming to consumers in the United States. DirecTV has more than 10.9 million subscribers and Echostar has more than 7.5 million subscribers. In this matter, the Department determined that the relevant product market was multichannel video programming distribution (“MVPD”), sometimes referred to as “pay television” service. It includes services provided by landline cable systems as well as satellite delivered services. The Department determined that the relevant geographic markets in which to examine the transaction’s competitive effects were local areas.

5. Whereas free over-the-air television consists of a handful of channels, typically fewer than 10, cable and satellite Apay television@ services generally provide access to at least dozens and more frequently, hundreds of channels. Moreover, standard over-the-air broadcast television does not include the variety of programming services that are available to Apay television@ subscribers: it does not provide access to popular sports, news, and entertainment services such as ESPN, CNN, and TNT; it does not permit access to premium movie services such as HBO or Showtime; and it does not provide access to advanced features such as pay-per-view events and movies or interactive channels. Accordingly, even though most U.S. consumers can receive over-the-air stations for free, most are willing to pay a significant sum--several hundred dollars a year--for Apay television@ service. Indeed, over the past several years, despite the fact that prices for Apay television@ service, particularly cable, have increased significantly, the percentage of households subscribing to such service has actually also increased. The FCC reported that as of June 2001, over 85 million U.S. households (more than 80% of total households) subscribed to a Apay television@ service.

6. Thus, the Department noted that most consumers do not consider broadcast television an acceptable substitute for cable and DBS services. Moreover, the Department's econometric estimation of demand elasticities, together with an assessment of profit margins, indicated that a hypothetical monopolist over "pay television" would indeed be able to profitably raise prices by significant amounts. The fact that free over-the-air television was unlikely to constrain anticompetitive conduc5(n)2.issd(ti)8iaconsJ7(s u12.8.2(ain )10c,p

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HBC would lessen competition substantially in the provision of Spanish-language radio advertising time to a significant number of advertisers in several geographic areas of the United States. On the same date, the Department filed a proposed consent decree which would require Univision to reduce its equity interest in Entravision to fifteen percent of outstanding shares within three years from the filing of the proposed decree and to ten percent within six years. The decree also would require Univision to relinquish its right to place directors on Entravision's Board, eliminate certain rights Univision has to veto important Entravision actions, and restrain certain conduct that would interfere with the governance of Entravision's radio business. The United States District Court will decide whether to enter the proposed decree as being in the public interest after the conclusion of a statutory public notice and comment period.

10. The Department's finding of likely anticompetitive effects depended on the analysis of the relevant product and geographic markets. Market definition depends on options available to customers – in this case, the advertisers who purchase advertising time. (This contrasts with the Direct TV/Echostar investigation, in which the Department focused on the end-user consumers that purchased satellite subscription TV services.)

11. In *Univision*

15. With regard to geographic markets, the Department concluded, as it has done in numerous radio merger investigations, that the relevant geographic markets consist of local areas traditionally referred to as "Metro Survey Areas" ("MSAs").[1] In this case, the Department examined six geographic markets[2] where Entravision and HBC each operated stations. Geographic markets in radio cases are local in nature (rather than national or regional) due to the fact that advertising placed by local and national advertisers on radio stations in each geographic market is aimed at reaching listening audiences within that geographic market, and radio stations outside that market do not provide effective access to these audiences. If there were a

throughout the United States. The complaint also specified that new entry was unlikely to have been timely, likely, or sufficient to prevent the combined firm from exercising market power.

19. In the market for broadband Internet transport services, the Commission's complaint alleged that that cable television wires or lines and digital subscriber lines ("DSL") offered in areas nearby telephone companies' central office locations were the two principal means of providing last mile access for broadband ISPs to customers. The Commission explained that satellite and fixed wireless technologies also provided last mile access, but that consumers did not view them as viable alternatives for DSL or cable broadband access. Prior to the merger, AOL's principal means of providing broadband access to its subscribers had been through DSL, and each broadband subscriber it obtained represented a lost revenue opportunity for cable broadband providers. The Commission alleged that the merger would have reduced AOL's incentive to promote and market broadband access through DSL in Time Warner cable areas, which in turn would have adversely affected DSL rollout in those areas and nationally, thereby increasing the merged firm's ability to exercise unilateral market power.

20. Finally, at the time of the review, ITV was a nascent technology that combined television programming with Internet functionality. In its complaint, the Commission noted that cable television lines have distinct competitive advantages over DSL in providing ITV services to broadband customers and that local cable companies will play the key role in enabling the delivery of ITV services. During 2000, AOL launched AOL TV, a first generation ITV service, which was well-positioned to become the leading ITV provider. As described in the Commission's "Analysis of Proposed Consent Order to Aid Public Comment," the Commission found that the merger could have enabled AOL to exercise unilateral market power in the market for ITV services in Time Warner cable areas, which also could have affected the ability of ITV providers to compete nationally.

### 2. Plurality and Diversity Rules in the Telecommunications Sector

21. The Federal Communications Commission has long sought to regulate media ownership and cross-ownership without infringing on the First Amendment rights (including freedom of expression) of broadcasters and consumers. The FCC has stated three main goals that guide regui1g9.9(t.5(a)10n09.7(t0.8(tha)A11

radio/television cross-ownership and newspaper radio/television cross-ownership rules as well as other rules related to broadcast ownership.[4]

### *2.1 Radio/television cross-ownership rule*

24. The radio/TV cross-ownership rule limits the number of commercial radio and television stations one entity may own in a given local market. The rule allows common ownership of at least one television station and one radio station in a geographic market represented as a Designated Market Area (DMA). In larger markets, a single entity may own additional radio stations depending on the number of other "voices" present in the market. More specifically, the rule allows a company to own one or two TV stations (provided it is permitted under the TV duopoly rule) and up to six radio stations in any single geographic market where at least twenty independent "voices" would remain post merger; two TV stations and up to four radio stations in a market where at least ten independent "voices" would remain post-

market. Imposing structural regulation in such a situation would not be very effective in promoting either