

percentage reduces substantially the likelihood that Univision/HBC's competitive incentives will be affected by its partial ownership of Entravision, thus preserving Univision/HBC's incentive to compete with Entravision.

The terms of the proposed Final Judgment reflect a balancing of the potential harm to competition that might arise from a divestiture that proceeds either too slowly or too rapidly. In merger cases in which the Department seeks a divestiture of assets as a remedy, the Department requires completion of the divestiture within the shortest time period reasonable under the circumstances. In this case, the time periods for divestiture of stock are appropriate, however, because of concerns that a more rapid divestiture might harm competition by adversely affecting Entravision's ability to raise capital to fund expansion of its radio business.

#### *C. Restrictions on Defendants Ability to Participate in the Governance of Entravision*

Section VI of the proposed Final Judgment restrains defendants from directly or indirectly: (1) Suggesting or nominating any candidate for election to Entravision's board or serving as an officer, director, manager, or employee of Entravision; (2) accessing any nonpublic information relating to the governance of Entravision; (3) voting or permitting to be voted any shares of Entravision stock that defendants own; (4) using or attempting to use any ownership interest in Entravision to exert any influence over Entravision in the conduct of Entravision's radio business; (5) using or attempting to use any rights or duties under the television affiliation agreement or relationship to influence Entravision in the conduct of Entravision's radio business; and (6) communicating to or receiving from Entravision any nonpublic information relating to Entravision's radio business.

Collectively, these provisions are intended to prevent defendants from participating in Entravision's governance or in the conduct of Entravision's radio business, notwithstanding the defendants' remaining equity interest in Entravision and the television affiliation relationship. While recognizing that Univision and Entravision have a mutual interest in matters affecting their television affiliation relationship, these provisions seek to ensure the competitive independence of the two companies in matters involving the radio business.

#### *D. Permitted Conduct*

Section VII of the proposed Final Judgment identifies certain conduct that is permitted. Individual managers, agents, and employees of the defendants are allowed to hold, acquire, or sell Entravision stock solely for personal investment. Officers and directors also may hold or sell Entravision stock but may not acquire any additional Entravision stock. Any Entravision stock held by these individuals is not subject to the stock-exchange or divestiture requirements of Sections IV and V of the proposed Final Judgment.

Section VII also provides that Univision may acquire a majority of Entravision's voting securities so long as the transaction is subject to the reporting and waiting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a, provided, however, that Univision cannot acquire or retain any interest in Entravision's radio assets in any of the Overlap Markets as part of such a transaction without the approval of the Department, in its sole discretion. This provision makes clear that the proposed Final Judgment does not prohibit a transaction in which Univision would acquire a majority stake in Entravision so long as the Department is afforded the ability to review the transaction pursuant to the established Hart-Scott-Rodino framework. The Department, of course, would review any such transaction to determine whether it was likely to lessen competition in any relevant market. Because the Department has determined that a combination of Univision and Entravision would lessen competition in the sale of advertising on Spanish-language radio in the Overlap Markets, a transaction in which Univision acquired Entravision may not include any Entravision radio assets from the markets that are the subject of the Complaint unless the Department gives its approval.

#### *E. Compliance, Inspection, and Other Provisions Designed To Ensure Effectiveness of the Proposed Final Judgment*

Section VIII of the proposed Final Judgment provides for appointment of a trustee should defendants not comply with the terms of the proposed Final Judgment that require stock divestitures within the established time periods. The trustee would have the power to accomplish the divestitures. Section IX requires the defendants to distribute the proposed Final Judgment to certain officers, directors, and appropriate employees, and obtain statements from

these individuals that they understand their obligations under the Final Judgment. The terms of this provision are designed to ensure that those individuals responsible for complying with the Final Judgment are aware of its existence and understand its requirements. Section IX also requires annual reports and certifications during the life of the decree. Section X provides a means for the Department to obtain information from the defendants to determine or secure compliance with the proposed Final Judgment. Under Section XI, the Court would retain jurisdiction over this matter to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions. Section XII provides that the proposed Final Judgment will expire 10 years after it is entered by the Court. Section XIII states that the entry of the proposed Final Judgment is in the public interest.

#### **IV. Remedies Available to Potential Private Litigants**

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* in any subsequent private lawsuit that may be brought against defendants.

#### **V. Procedures Available for Modification of the Proposed Final Judgment**

The Department and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the Department has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the Department written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The Department will evaluate and respond to the comments. All comments will be given due