

investigation. In this case, the market is comprised of the competitive alternatives for certain advertisers seeking to purchase commercial time on Spanish-language radio stations. Market participants compete on the basis of both price and service (or “quality” or “innovation”). *See, e.g.*, Complaint ¶ 14 (relevant product market defined in terms of options available to certain advertisers facing “a small but significant increase in the price of advertising time on Spanish-language radio, or a reduction in the value of services provided”) (emphasis added). As the Complaint and CIS state, Entravision and HBC heavily promote their stations against each other in an effort to gain high ratings; they program and format their stations in an effort to attract listeners away from each other; they aggressively seek to acquire stations; and they closely monitor each other’s competitive positions. Complaint ¶ 19; CIS at 6. As explained in the CIS, the goal of the proposed Final Judgment is to protect such vigorous price and nonprice competition between Entravision and HBC by foreclosing the ability of a combined Univision/HBC to improperly influence Entravision’s strategic decision making with regard to its radio business. *See* CIS at 9–11. Contrary to AAI’s assumption, the United States considered the many ways in which advertisers benefit from competition—not just price competition—in crafting its remedy.

c. *The consideration of political and cultural viewpoints are extraneous to antitrust enforcement.* AAI also asserts that the United States should take into account under its antitrust analysis “consumer interest in diversity of sources of political and cultural information” within a combined Spanish-language television and radio market. AAI cmt. at 1, 3–4. It is not the role of the United States to use the antitrust laws to regulate actual content or to establish quotas for the types of programming that media stations must broadcast. Accordingly, we do not seek to ensure in the context of a merger review that media companies provide a balance of political views or a proper mix of cultural issues as part of their programming. The United States does seek to ensure that content is determined in a competitive marketplace, however. The relevant product identified in the Complaint is the provision of advertising time on Spanish-language radio stations; the customer is an advertiser purchasing that time. In order to supply this product, media stations compete to gain

audience ratings, as it is audience access that is being sold to the advertisers. That competition benefits advertisers as discussed above. It also benefits individual audience members (listeners of radio stations) because stations will compete for their attention by offering high quality content. In this way, the relief in the Final Judgment that protects advertising competition also serves to protect individual audience members by maintaining vigorous competition between the Spanish-language radio stations owned by Univision/HBC and those owned by Entravision.

d. *The allegation that Univision may refuse to deal with certain advertisers or impose tying arrangements does not warrant condemning the transaction.* SBS alleges that the merger will provide Univision an enhanced incentive to refuse to deal with or discriminate against Spanish-language radio competitors who seek to advertise on Univision and will also provide Univision the ability to “tie” radio and television advertising time for advertisers who seek to use both mediums. (SBS Cmt. at 3). The United States did not find evidence upon which to base a cause of action pursuant to SBS’s theory. If Univision engages in the alleged conduct in the future, and if the conduct satisfies the requirements of an antitrust violation, then the United States (or a private plaintiff with standing) could challenge the conduct at that time. The mere speculation that Univision will violate the antitrust laws, however, does not justify enjoining this transaction.

B. SBS’s Assertions That the Proposed Final Judgment Will Not Remedy the Competitive Concerns Raised in the Complaint Are Unfounded

SBS asserts that the remedy will not address the competitive harms raised in the Complaint because Univision will still have the ability to improperly influence Entravision’s actions to the detriment of radio competition between Entravision and Univision/HBC. Specifically, SBS contends that (1) the existence of the television affiliation agreement between Univision and Entravision will cause Entravision to mitigate its radio competition with a combined Univision/HBC; (2) Univision’s continued retention of limited shareholder “veto” rights in Entravision might foreclose competition-enhancing transactions; (3) the time period to complete the stock divestitures called for in the proposed Final Judgment is too long; and (4) Univision’s ability to hold 10 percent of Entravision’s stock will cause Univision/HBC to compete less

aggressively against Entravision. SBS cmt. at 1, 4–6.⁵

Contrary to SBS’s assertions, the proposed Final Judgment will preserve competition between Entravision and HBC by restricting Univision’s ability to control or influence Entravision’s radio business and by significantly reducing Univision’s equity stake in Entravision. *See* CIS at 9–13 (describing specific means by which the proposed Final Judgment will preserve competition).

Addressing SBS’s first contention, as stated in the CIS, Univision and Entravision have a long-standing television relationship in which Entravision broadcasts Univision programming on television stations owned by Entravision. This relationship is embodied in a pre-existing, long-term affiliation agreement that assigns rights and responsibilities to both parties and also provides for Univision to act as Entravision’s national sales representative for television advertising. In addition to the fact that this vertical integration may yield certain efficiencies and consumer benefits, there is nothing in this affiliation agreement that allows Univision to control any Entravision radio decision, including decisions regarding the acquisition of radio stations. Moreover, the decree itself mandates that the two companies act as independent entities and there is no reason to believe that Univision will violate the terms of the decree (and thereby subject itself to contempt of court proceedings) by using its television relationship to influence any Entravision strategic decision. The Division found no evidence to suggest that the mere fact that a television affiliation agreement exists between them enables Univision to unduly influence Entravision’s decisions with respect to its radio business, the only area in which the combined Univision/HBC will compete with Entravision. Finally, Entravision has every incentive to operate its radio stations in a fully competitive manner.

As to SBS’s second contention, although Univision will maintain a few limited governance rights in Entravision that it held prior to the contemplation of this merger, the proposed Final Judgment eliminates Univision’s ability to exercise these rights over Entravision radio decisions. The rights that are retained relate to the two entities’ television relationship, which is not a basis of concern alleged in the

⁵ As noted above, AAI asserts that the CIS fails to explain why Univision was not forced to relinquish all its shareholder “veto” rights in Entravision and to divest all its Entravision equity. AAI cmt. at 1 n.2. These points are addressed in this response to SBS’s comments.