

Complaint. Univision will retain a modified right to veto a merger or transfer of ownership of Entravision. Although this right does impact ultimate ownership of Entravision, it cannot be used to veto or influence day-to-day decisions relating to radio competition or strategic decisions such as the buying or selling of individual radio stations.

With respect to SBS's third contention, while the United States traditionally requires defendants to divest business assets as expeditiously as possible to maintain their value and ongoing capabilities, the relief sought here is for divestiture of stock, the retention of which does not raise the same spoliation concerns as the retention of business assets raises. Moreover, based on our investigation, we concluded that a forced divestiture of equity within a short amount of time could cause material hardship to Entravision's vitality as a significant competitor (for example, a "fire-sale" of Univision's stock holdings in Entravision could depress Entravision's stock price to the point that it would not be able to issue equity to fund potential acquisitions). Such hardship should be avoided or minimized if at all possible so as to maintain Entravision as a strong competitor to the unified Univision/HBC. The time period reflects a balancing designed to minimize the potential harms to competition that might arise from a divestiture that proceeds either too slowly or too rapidly.

Finally, responding to SBS's fourth contention, under the circumstances of this case, Univision's ability to hold no more than 10 percent of Entravision's equity will not give it control or even significant influence over Entravision's business decisions. The decree significantly restrains Univision's ability to participate in Entravision's governance. For example, Univision will not be allowed: To suggest or nominate any candidate for Entravision's board of directors; to have Univision employees serve as Entravision employees; to participate in any Entravision board of directors meeting; to vote its equity; and to have access to any of Entravision's competitively sensitive information. See Final Judgment, Section VI. Moreover, Univision's reduced equity stake in Entravision is not sufficiently large to affect competition between them given the market structure of the relevant geographic markets at issue.<sup>6</sup>

<sup>6</sup> Cf. *Archer-Daniels-Midland*, 272 F. Supp. 2d at 8 (crediting the Government's statement in Tunney Act proceeding that factual investigation showed

## V. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is submitting these public comments and this Response to the **Federal Register** for publication. After these comments and this Response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated this 31st day of October, 2003.

Respectfully submitted,

/s/

William H. Stallings,  
Litigation III Section, Antitrust Division,  
United States Department of Justice, 325  
7th Street, NW., Suite 300, Washington, DC  
20530.

## Certificate of Service

The undersigned certifies that a copy of the foregoing Response to Public Comments was served on the following counsel, by electronic mail in PDF format, this 31st day of October, 2003:

John M. Taladay, Howerey, Simon,  
Arnold & White L.L.P., 1299  
Pennsylvania Avenue, NW.,  
Washington, DC 20004-2402;

Neil W. Imus, Vinson & Elkins L.L.P.,  
The Willard Office Building, 1455  
Pennsylvania Avenue, NW.,  
Washington, DC 20004-1008;

and on the following entities by  
facsimile and U.S. Mail, on this same  
date:

Albert A. Foer, The American Antitrust  
Institute, 219 Ellicott Street, NW.,  
Washington, DC 20008, (202) 276-  
6002 (phone), (202) 966-8711  
(facsimile);

Claudia R. Higgins, Counsel for Spanish  
Broadcasting Systems, Kaye Scholer  
LLP, 901 15th Street, NW., Suite 1100,  
Washington, DC 20005, (202) 682-  
3653 (phone), (202) 682-3580  
(facsimile).

/s/

William H. Stallings

June 12, 2003

James R. Wade  
Chief, Litigation III Section, Antitrust  
Division, United States Dept. of Justice, 325  
7th Street, N.W., Suite 300, Washington,  
DC 20530

Ce: Chairman Michael Powell, Federal  
Communications Commission

that two companies operated as independent competitors notwithstanding one company's partial equity ownership in the other).

Re: U.S. v. Univision Communications, Civ.  
Action No. 1:03CV00758

Dear Mr. Wade: These constitute the Tunney Act comments of the American Antitrust Institute ("AAI") in regard to the acquisition of Hispanic Broadcasting Corporation ("HBC") by Univision Communications Inc. ("Univision").<sup>1</sup>

The Competitive Impact Statement ("CIS") in this case appears to reflect an unduly narrow interpretation of the Clayton Act. We have only minor quarrels with the standard analysis embodied in the CIS insofar as it identifies horizontal overlaps in the Spanish-language radio industry and seeks to eliminate these overlaps through divestitures.<sup>2</sup> Our principal concern is with what the CIS fails to address. It should evaluate the consequences of this merger in conventional terms in an overall market consisting of Spanish-language media, examining such traditional criteria as advertising effects. In addition, it should evaluate the consumer interest in diversity of sources of political and cultural information within this more general market.

## I. The CIS Ignores the Elephant in the Room

The CIS states that HBC is the nation's largest Spanish-language radio broadcaster and that Univision is the largest Spanish-language media company in the U.S.

Univision is described as having two Spanish-language broadcast networks, Univision and Telefuturo, one cable channel, Galavision, and several other Spanish-language media operations, including Internet sites and services, music recording, distribution, and publishing. Univision also has a 30-percent equity share in Entravision, which owns or operates 55 mostly-Spanish radio stations and 49 television stations that broadcast Univision programming. We are not informed of Univision's market share in Spanish-language television.

HBC owns or operates more than 60 radio stations, virtually all broadcasting in Spanish. We are not informed of HBC's market share in Spanish-language radio. And, of course, we are not informed of market shares in any combined Spanish-language media market.

The Complaint is limited to the provision of advertising time on Spanish-language radio stations to advertisers that consider Spanish-language radio to be a particularly effective medium. This is the only product market deemed relevant. Six metropolitan areas are designated as the relevant geographic markets.

The "elephant in the room" whose presence has been mentioned in the CIS but given no antitrust importance, is television. We recognize that the Antitrust Division has traditionally treated radio and television as

<sup>1</sup> The AAI is an independent 501(c)(3) research, education, and advocacy organization described at [www.antitrustinstitute.org](http://www.antitrustinstitute.org).

<sup>2</sup> For example, we are puzzled by the CIS's failure to explain why the Proposed Final Judgment does not require elimination of all shareholder rights that Univision currently possesses in Entravision and for failing to explain why it allows Univision to retain any stock in Entravision. If these are simply the best compromises the Division could get, why not say so?