

We are told in the CIS that the Court may only review the remedy in relation to the violations that the U.S. has alleged in its Complaint. It might be argued that the DOJ decision not to include a general Spanish-language media market in its complaint is the end of the story. But, as the CIS quotes the Ninth Circuit, "The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.'" *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)." Because in practice a complaint is drawn up by the DOJ at the same time as a settlement order is drafted, the complaint is to some degree, in reality, not merely the cause of the settlement, but the result of the settlement. Although we do not want courts to displace the DOJ role of determining what goes into a complaint, a settlement that does not deal with obvious antitrust issues should not be approved until the CIS adequately explains what is going on.

In this acquisition, the Complaint includes facts about the two companies that would suggest to many observers that there may be critically important competitive issues that go beyond the radio market. If the Tunney Act is to protect the public interest, including the perception that antitrust settlements are not based on political considerations, both the public and the court must be provided with sufficient information to determine whether the complaint itself was unreasonably limited.

The legislative genesis of the Tunney Act was concern that settlements might be made on the basis of political rather than strictly professional analysis. To expand the Hypothetical of a Dominating Voice, if the ownership of the merging parties happened to be of the same political party as a particular national Administration, allowing the merger to proceed, subject only to a mild radio divestiture, with the potential of political gain for the political party, this would be the type of politicization of antitrust that the Tunney Act was intended to remove.

We certainly do not charge that this specific merger is being approved for political gain, but are trying to make a larger point. In order to protect antitrust from

(or video rental stores) that compete in myriad neighborhoods, with a largely local clientele. One of the chains features best sellers or the most popular films, the other chain has a more eclectic offering; including a wider range of special interest and "artistic" selections. If the first chain were to acquire the second, there might well be some local price effects, but the most important effect on most consumers (but, not all) is likely to be the effect on variety if the combined store adopts the buyer's business model.

"This reality does not mean that the merger should be attacked on that account. It might well be, for example, that it is a lot easier for a potential new entrant to provide variety competition for the merged enterprise than it would be to provide price competition. What it does mean is that an initial focus on a hypothetical price effect, according to traditional Guidelines analysis, might miss the most important questions."

perceptions of political influence, it is essential that the Tunney Act's public interest oversight be fully informed, with all relevant major antitrust theories fully ventilated in the CIS.

Sincerely,

Albert A. Foer  
President.

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James R. Wade

Chief, Litigation III Section, Antitrust  
Division, U.S. Department of Justice, 325  
Seventh Street, NW., Suite 300,  
Washington, DC. 20530

Re: *United States v. Univision  
Communications Inc.*, Civ. Action No.  
1:03CV00758

Dear Mr. Wade: Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), Spanish Broadcasting System, Inc. ("SBS") respectfully submits its comments on the proposed Final Judgment filed on March 26, 2003, by the Antitrust Division of the U.S. Department of Justice ("Department") in connection with the proposed acquisition of Hispanic Broadcasting Corporation ("HBC") by Univision Communications Inc. ("Univision").

A Univision and HBC combination raises serious antitrust issues that the Department's proposed Final Judgment fails to address. The draft decree leaves unremedied significant harm to competition and consumers that surely will result from the combination of the dominant firm in Spanish-language radio (HBC) with the dominant firm in Spanish-language television (Univision). Even if, as the Department of Complaint posits, Spanish-language radio and television belong in separate markets, the remedy the Department selected fails to solve the competitive problem it identified: Univision's significant influence over one of HBC's closest competitors in Spanish-language radio, Entravision Communications Corporation ("Entravision"). The settlement only partially and incompletely disentangles Univision and Entravision. Moreover, the inadequate remedy the Department selected requires six years to implement, a period during which the transaction will continue to harm competition and consumers. Accordingly, the Court should reject the proposed Final Judgment as not within the reaches of the public interest.

1. SBS initially notes its disagreement with the Department's decision to confine its analysis to the product market for the "provision of advertising time on Spanish-language radio" (Compl. ¶ 14). The Department defined this market because "[m]any local and national advertisers" would "not turn to other media, including radio that is not broadcast in Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio" or its equivalent (*Id.* emphasis added). The Department, however, provides no justification for ignoring the *many other* advertisers for whom Spanish-language radio

and television are good substitutes.<sup>1</sup> From the perspective of these advertisers, an HBC/Univision combination is effectively a merger to monopoly, for it combines the dominant Spanish-language radio broadcaster (HBC) with the dominant Spanish-language television broadcaster (Univision).<sup>2</sup> This Spanish-language broadcasting market (defined from the perspective of advertisers for which Spanish-language television and radio are good substitutes) easily coexists with a Spanish-language radio-only market (defined from the perspective of other advertisers). The Department's Complaint and Competitive Impact Statement are entirely silent on why the Department has chosen to ignore the interests of advertisers who are vulnerable to the enhanced market power HBC and Univision will enjoy as a result of their combination.

Even accepting that Spanish-language radio and Spanish-language television belong in separate markets, SBS disagrees with the Department's conclusion that the only competitive harm from this acquisition flows from Univision's ownership of a significant stake in both Entravision and HBC. Specifically, Univision's acquisition of the dominant Spanish-language radio broadcaster, HBC, will give Univision, the dominant Spanish-language television broadcaster, an enhanced incentive to refuse to deal with or discriminate against Spanish-language radio competitors (such as SBS) who seek to advertise through Univision. Advertising on television is important for promoting Spanish-language radio stations and thus for surmounting the high entry barriers in Spanish-language radio that the Complaint identifies (Compl. ¶27).

Moreover, after the merger, Univision/HBC will have the power to insist that Spanish-

<sup>1</sup> Letters expressing the views of such advertisers can be found in a number of letters filed with the Federal Communications Commission. See, e.g., Letter from Phillip L. Verveer *et al.*, Attorneys Willkie Farr & Gallagher to Marlene H. Dortch, Secretary, Federal Communications Commission (June 2, 2003) (attachments), available at [http://gulfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi) (proceeding No. MB02-235) (attached hereto as Exhibit A). These letters demonstrate that there are many advertisers for whom the relevant market for analyzing this transaction is not properly confined to Spanish-language radio.

<sup>2</sup> HBC's 2003 10-K explains that it "is the largest Spanish-language radio broadcasting company." Hispanics Broadcasting Corp. Form 10-K (Mar. 31, 2003), available at <http://www.sec.gov/Archives/edgar/data/922503/000104746903011344/a2107188210-k.htm>. Univision "is the dominant broadcaster of Spanish-language television in the United States, capturing an approximate 81% audience share." Entravision Communications Corporation Annual Report for 2001, at 25, available at [www.entravision.com](http://www.entravision.com). HBC's and Univision's combined dominance is illustrated by letters and charts filed with the Federal Communications Commission. See Letter from Phillip L. Verveer *et al.*, Attorneys Willkie Farr & Gallagher to Marlene H. Dortch, Secretary, Federal Communications Commission (June 11, 2003) (attached as Exhibit B) and Letter from Andres Jay Schwartzman, President and CEO, Media Access Project to Marlene H. Dortch, Secretary, Federal Communications Commission (June 9, 2003) available at [http://gulfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi) (proceeding No. MB02-235) (attached as Exhibit C).