

SPAIN

Merger between Canal Satélite Digital and Vía Digital

On 8 May, the two digital satellite platforms, Canal Satélite Digital and Vía Digital, notified the competition authorities of a merger agreement involving a 23% capital increase in Sogecable, reserved for Vía Digital shareholders (see fig. 1). By no later than **13 December**, once the reports requested by the Spanish Government were received, the Council of Ministers would adopt an agreement on the operation. For many people, this agreement represented the announcement of an end to the “digital war” that had begun on 24 December, 1996.

All the parties involved believe the government will give the merger the go-ahead but, although not binding, the agreement shall have to take into account the observations made by the European Commission, the Telecommunications Market Commission and the Restrictive Practices Court and should make the operation subject to particular conditions.

On 16 August, the **European Commission** issued a report on the merger to the Spanish Government, after finding that the affected markets were exclusively under Spanish jurisdiction. In particular, the EU competition authority felt that the operation would affect the following markets:

- Pay TV, where the two parties currently compete and have a market share of approximately 80% (in number of subscribers) and 80-95% (in sales)
- Acquisition of film rights

- Acquisition and use of rights to football matches and other sporting events
- Television channel sales
- Infrastructure and telecommunications, and the possibility of strengthening Telefónica's dominant position in this market.

On 29 August, the **Telecommunications Market Commission (CMT)**, the guarantor in Spain of competition in the telecommunications sector, announced its belief that the merger would affect eight markets, both those relating to content (pay TV, cinema, football) and markets that provide access to telecommunications networks.

Finally, on 13 September, the Finance Ministry sent the report from the Competition Defense Service (www.mineco.es/dgpedc/new/n280infweb.PDF) to the Restrictive Practices Court (TDC), which had to issue a finding on the report within a maximum period of two months.

With regard to the considerations that the court may contribute, although the overall sector has now changed, it is worth remembering its findings in the **Cablevisión** (www.mineco.es/tdc/Concen.Economicas/c20.pdf). case. Cablevisión SA was the first merger initiative between Sogecable and Telefónica, in 1995. The operation was prevented by the European Commission, as Mr. Van Miert (the European Competition Commissioner from 1993-1999) found it involved a Community dimension and opposed it because he understood that the merger would prevent new competitors from entering the cable, broadcast services and television markets.

Another point to bear in mind when analyzing this operation is the decision by Italy's competition authorities with regard to the merger proposal by the digital platforms Telepiu and Stream (a project that did not go ahead) and the conditions the authorities imposed for the merger to proceed (see

http://www.agcm.it/agcm_eng/COSTAMPA/E_PRESS.NSF/0af75e5319fead23c12564ce00458021/5f32979f6dc29cdbc1256bba004acd32?OpenDocument
y http://www.agcom.it/provv/d_146_02_CONS.htm).

Other news:

- **Act 34/2002**, of 11 July, concerning **information society** and e-commerce services (OSG No. 166 of 12/07/02).
- Additional provision 16a of Act 24/2001, accompanying the State budgets for 2002 (OSG of 31/12/02) modifying articles 3.2, 5.1 and 26 of the Statute on Radio and Television (ERTV). In accordance with Community regulations, this modification included a **definition of the**

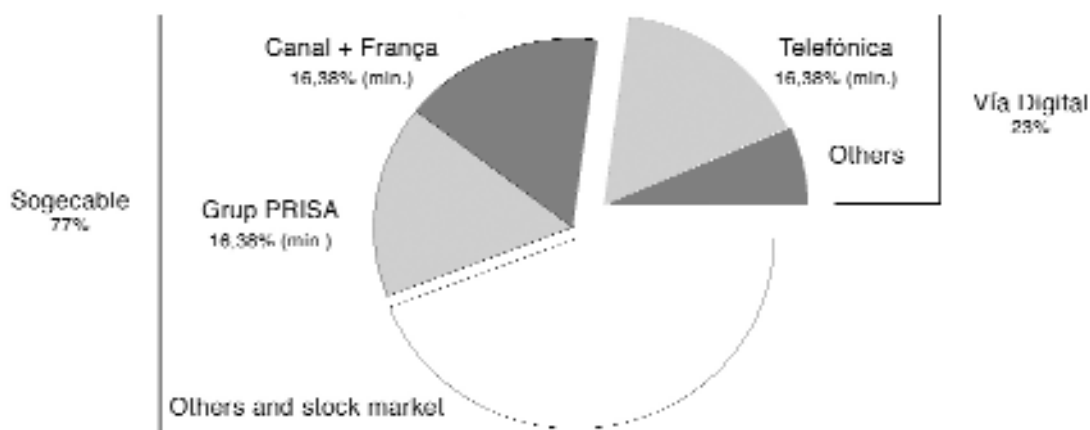
public service function of broadcasting attributed to RTVE (see new wording of section 1, article 5 of ERTV).

- Resolution of 4 September, 2002 from the *Sports Broadcasts Council* organizing the publication of the Agreement on the **catalogue of general interest sporting competitions and events** for the 2002-2003 season (OSG No. 218 of 11/09/02). The Council was created by Royal Decree 991/1998 of 22 May, as a collegiate body pertaining to the Administration and involved associations and is attached to the Ministry of Culture .

- The resolution of 16 July, 2002, from the Secretary of State for Telecommunications and the Information Society, attributing public resources for numbering to additional rating services (**903** and **906**) (OSG No. 186 of 05/08/02).

- Second draft of the preliminary plan for an **Act on Electronic Signatures** (text available at

(www.sgc.mcom.es/).



New regulatory framework for the electronic communications sector

On 14 February, 2002, the European Community approved the new regulatory framework on telecommunications that substantially modified the existing one (OJEC No. L-108 of 24/4/02) , to which Member States have to adapt their legislation before **24 July, 2003**. The Ministry for Science and Technology has opened the **General Communications Bill** (set to replace the 1998 Act on General Communications) to public consultation and the text is available at

(http://www.mcyt.es/grupos/grupo_setsi.htm)

This new Community regulatory framework involves:

- A **“framework directive”** (Directive 2002/21/EC),
- An **“authorization”** directive (Directive 2002/20/EC),
- An **“access”** directive (Directive 2002/19/EC),
- A **“universal service”** directive (Directive 2002/22/EC) and
- A **decision** on the **radio spectrum** (Decision 676/2002/EC).

The new provisions are fruit of a review that began in 1999 and which was based on an evolution of the sector, fruit of the processes of **digitalization** and **convergence** between the telecommunications sector, the media and the IT industry.

The directives that **previously** regulated the telecommunications sector were provisions aimed at deregulating the sector, while the current directives were approved in accordance with article 95 of the Court of Justice of the European Community, the legal basis for the adoption of harmonization standards aimed at helping the performance of the **domestic market**.

The new legal system for electronic communications is based on the following **principles**:

- **minimum regulation**
- **technological neutrality**, i.e., technology that does not impose or discriminate in favor of any particular technology, but rather guarantees that the provision of services is regulated in a standardized manner independently of the infrastructure of the medium in which the services are provided,
- **separation between regulations on broadcast**

networks and the content network. The application of this principle excludes the sphere of application of the content of the services provided on communication networks, i.e., the provision of audiovisual and IT services. However, they are applied to networks that carry television signals, digital television receivers (in relation to those that establish the obligation of fostering inter-operability), voice telephony systems and email. It is important to bear in mind that the regulatory framework also involves:

- Regulation No. 2887/2000 concerning **unbundled access to local loops** (OJEC L-336, of 30/12/2000)
- **European Commission directives** concerning **market analyses** and evaluation of the market significant weight of electronic communication networks and services (OJEC No. C-165 of 11/07/02)
- Commission decision 2002/627/EC of 29 July 2002 establishing the European Regulators Group for Electronic Communication Networks and Services (OJEC No. L-200 of 30/07/02)
- Directive 2002/58/EC concerning the **treatment of personal data and the protection of privacy** in the electronic communications sector (OJEC No. L- 201 of 31/07/02, page 37).

Other news:

- Call for demonstrations of interest in the selection of **the top-level “.eu” register** (OJEC No.C-208 of 03/09/02) (See EC Regulation 733/2002 of 22 April, 2002, concerning the implementation of the top-level “.eu” domain (OJEC No. L-113 of 30/04/02).
- Public consultation of **intellectual property and Internet rights**

(http://europa.eu.int/BFM/consultation/index.cfm?fuseaction=form&id_form=211&lang=en)

- Warning published in relation to assuming the **joint sale of media rights of the UEFA Champions League** on an exclusive basis (OJEC No. C-196 of 17/08/02).

The UEFA press release on this subject is available at

<http://www.uefa.com/uefa/news/Kind=8192/newsId=25426.html>

- Publication of the **consolidated measures on events**

of major importance (art. 3.2.2. of the Televisions Without Frontiers directive) (OJEC No. C-189 of 09/08/02)

- Growth and the broadcast sector: “**i2i audiovisual**”–2002 initiative. Measures to foster independent European production companies’ access to external funding that financial and banking institutions could make available to them (OJEC No. C-178, of 26/07/02)

- Publication of the study commissioned by the European Commission into **new forms of advertising** (currently available in French only at

http://europa.eu.int/comm/avpolicy/stat/studpdf/pub_rapportfinal.pdf)

- Finding of the Committee of the Regions, March 2002, (OJEC No. C-192 of 12/08/02) and the European Parliament of 5 June, 2002 (A5-0222/2002), concerning the Communication from the European Commission on particular legal aspects relating to cinema works and other audiovisual works.

- Council Directive 2002/38/EC of 7 May, 2002, temporarily amending Directive 77/388/EEC with respect

to the system of **value-added tax arrangements applicable to radio and TV broadcasting services and certain electronically supplied services** (OJEC No. L-128 of 15/05/2002, page 41.)

- **eEurope 2005: An Information Society for Everybody** action plan (COM Document (2002) 263 final, 28/05/02). European Union action plan proposing as a basic goal that the EU develops a) *on-line* public services (*eGovernment*, *eLearning* and *eHealth*), b) a dynamic environment for e-commerce, c) total access to broadband at competitive prices, and d) a reliable information infrastructure.

- **Sentence from the Court of Justice of the European Communities (CJEC)**, of 22 January, 2002, concerning Spanish legislation with regard to **digital television decoders** (case C-390/99 Canal Satélite Digital, SL / General State Administration)

- **Council Resolutions** of 21 January, 2002, concerning “**Culture and the Knowledge Society**”, “the place of culture in the European Union” and the development of the broadcast sector (OJEC No. C-32 of 05/02/2002).

COUNCIL OF EUROPE

- **Draft Recommendation on the democratic and social impact of digital broadcasting** (02/09/2002) (text available in English and French at

<http://www.humanrights.coe.int/media/>)

- Study from the European Audiovisual Observatory concerning the insertion of **advertising during the broadcasting of football matches**, and in particular, whether this practice meets the Television Without Frontiers directive and the European Convention on trans-border television. Analysis carried out using the results of a questionnaire on applicable legislation and jurisprudence in relation to this matter.

http://www.obs.coe.int/online_publication/expert/ad_football.html.fr

France. Digital Terrestrial Television

France established the implementation of Digital Terrestrial Television (DTT) with the adoption of Act 2000-719 of 1 August, 2000, amending Act 86-1067 of 30 September concerning the freedom of communication.

The **model** France chose establishes a distinction between the legal systems applicable to the public and private sectors and a **distinction between a multiplex manager and a program editor**. Multiplex managers and program editors shall be **different operators with different authorities** (licenses awarded by the Conseil Supérieur de l'Audiovisuel, or CSA).

In accordance with the new article 30-2, multiplex managers must be proposed by program editors that have obtained a license to show a DTT program. Once the license has been awarded and within a period of 2 months, the program editors who share a multiplex must propose a company to run the multiplex to the CSA. This company shall be considered a "service distributor". If no such agreement exists, the CSA can withdraw the license from the program editors and call a new public tender. If the CSA does not agree with the proposed company, the program editors shall have a new 2-month period to propose a new company.

The procedure for **awarding DTT licenses at the State level** began on 24 July, 2002, when the CSA opened a bid to award **22 television program licenses on 4 multiple channels** (read the text on the CSA decision at <http://www.csa.fr/pdf/texteoff.pdf>). The list of companies chosen was due to be published on 31 October, 2002.

For this bid, the CSA adopted a broad definition of *television service*, which meant that companies could present general or theme-based offers to be broadcast on free-to-air or pay TV. With regard to the latter, it is important to bear in mind that the CSA aims to have a balance in supply and, together with the channels reserved for the public sector, there could be 15 free-to-air programs and 15 pay-TV programs.

The CSA began "public auditions" with the different candidates (65 bids were presented) on 17 June. The interviews were broadcast on the parliamentary channel, and the transcripts are available at

http://www.csa.fr/infos/publications/publications_tlevision.php.

Once the interviews were carried out, the CSA sent a letter to the French prime minister requesting "a response to the following questions":

- a) funding for the adaptation of the frequencies;
 - b) any possible redefinition of public service, and
 - c) the conditions for developing local television
- (see the content of this letter at

http://www.csa.fr/actualite/dossiers/dossiers_detail.php?id=9727&chap=2127).

Regulations adopted:

Decree No. 2001-1330 of 28 December (JO 302 29/12/01) on **broadcasting cinema works**

Decree No. 2001-1333 of 28 December (JO 302 29/12/01) on **quotas**

Decree No. 2001-1331 of 28 December (JO 302 29/12/01) on **advertising and sponsorship**

Decree No. 2002-125 of 31 January (JO 01/02/02) establishing **must-carry obligations**.

Finally, with regard to **public television operators**, the Official Journal of 4 May, 2002, published the adaptations of the *cahiers de charges*. In particular, we would refer to the following decrees:

Decree No. 2002-750 of 2 May, modifying the *cahier des missions et des charges* of France 2 and France 3 (OJ 104 of 04/05/02)

Decree No. 2002-751 of 2 May, modifying the *cahier des missions et des charges* of "La Cinquième" (OJ 104 of 04/05/02)

Decree No. 2002-752 of 2 May, establishing the *cahier des charges* of "La Chaîne d'information continue" (OJ 104 of 04/05/02)

Decree No. 2002-753 of 2 May, establishing the *cahier des charges* of "La Chaîne de rediffusion" (OJ 104 of 04/05/02).

EU Countries. Other news.

Publication of a study prepared by the **European Institute for the Media** (EIM) on **television programming regulations** in Germany, Belgium, Denmark, France, Holland, Norway and the United Kingdom (2002).

(<http://www.eim.org/Events/Downloads/NOS-study-200206.pdf>)

- Germany

Legal recommendations from *Direktorenkonferenz der Landesmedienanstalten* (DLM, the organization that groups together the broadcasting regulatory authorities from the *länders*) on airtime awarded to political parties during electoral periods, aimed at private television operators.

(http://www.alm.de/bibliothek/anlage_beschluss1002_rechtl_hinweise_wahlwerbung.doc)

- Austria

First **statewide DTT license awarded**. The license was awarded to ATV in accordance with the Act on Private Television that came into effect on 1 August, 2001.

- Finlandia

New legislation for the communications sector. Laws modifying current regulations on telecommunications, television and radio, the State Radio and Television Fund, the Finnish Broadcasting Company and the administration of communications came into force on 1 July, 2002.

- Francia

Finding from the Council of State on the interpretation of article 40 of the Act dated 30 September, 1986, concerning the **shareholding of Canal+**.

(http://www.ddm.gouv.fr/textes_de_reference/documents/avisce270602.html)

- Ireland

New Broadcasting Act:

<http://www.irigov.ie/bills28/acts/2001/a401.pdf>

New Telecommunications Act:

(<http://www.gov.ie/bills28/acts/2002/a2002.pdf>)

- Portugal

New **Television Act** (Lei nº 18/A/2002 de 18 de julho. Segunda alteraçao à Lei nº 31-A/98, de 14 de julho (aprova a Lei de Televisao).

(http://www.aacs.pt/legislacao/lei18a_2002.htm)

- United Kingdom:

- The *Independent Television Commission* (ITC), the British authority regulating private television, opened the **Programme Supply Code** to public consultation. (15/09/02)

(http://www.itc.org.uk/the_key_issues/public_consultations/consultation_view.asp?consultation_id=28)

- The ITC published a new **Code on advertising** (28/08/02)

(http://www.itc.org.uk/uploads/REVISED_ADVERTISING_STANDARDS_CODE.pdf)

- The ITC carried out a **comparative review of content regulation** (16/08/02)

(http://www.itc.org.uk/uploads/Comparative_Review_of_Content_Regulation_A_McKinsey_Report_for_the_Independent_Television_Commission.doc)

- The ITC awarded the **ITV Digital license** to a consortium led by the **BBC** and **Crown Castle** (16/08/02)

http://www.itc.org.uk/latest_news/press_releases/release.asp?release_id=620

- creation of **OFCOM**, the authority set to regroup the functions of the current bodies ITC, Radio Authority, BSC, OfTel and the Radiocommunications Agency, and which will be operating from late 2003

(<http://www.itc.org.uk/ofcom/index.asp>)

- publication of the **Draft Bill Communications**

(<http://www.communicationsbill.gov.uk/>)

- The **BBC** announced a **management reform** "BBC Governance in the OFCOM Age"

(<http://www.bbc.co.uk/info/bbc/pdf/bbcgovernancebooklet.pdf>)

"BBC Chairman unveils modern governance for the OFCOM age"

(<http://www.bbc.co.uk/info/news/news385.shtml>)

- Greece

In application of Act 2683/2000, the nine members of the new Broadcasting Council were appointed in August, a decision made necessary so that the Council could begin to operate.

OTHER COUNTRIES

- United States:

-- The *Federal Communications Commission* (FCC) initiates a new review of regulations concerning **media ownership** (12/09/02)

(http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226188A1.txt)

-- The FCC adopted a plan aimed at enabling all television receivers to receive **digital television** within 5 years (08/08/02)

(http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-225221A1.txt)

- Serbia:

New Broadcasting Act

(<http://www.serbia.sr.gov.yu/news/2002-07/18/325244.html>)

- Venezuela:

Draft bill on Social Responsibility in the Provision of Broadcasting Services

(<http://www.innovarium.com/Entorno/Telecom2000.htm>)