

**SUMMARY OF THE REPORT-PROPOSAL IN THE SECOND PHASE CASES  
C/0110/08 ABERTIS/AXION AND C/0084/08 TRADIA/TELEDIFUSION MADRID**

**I. NATURE OF THE OPERATION AND COMPANIES**

The concentration operation that gave rise to case C/0110/08 ABERTIS / AXIÓN consists in the acquisition by ABERTIS, of the ABERTIS group, of exclusive control of AXIÓN.

Also, the concentration operation that gave rise to case C/0084/08 TRADIA / TELEDIFUSIÓN MADRID consists in the acquisition by TRADIA TELECOM, S.A. (“TRADIA”), a wholly owned subsidiary of ABERTIS, of exclusive control over TELEDIFUSIÓN MADRID, S.A. (“TELEDIFUSIÓN MADRID”).

**ABERTIS** and TRADIA are wholly owned subsidiaries of ABERTIS Infraestructuras, S.A.

ABERTIS has an analogue and digital network for transport and broadcasting of audiovisual signals with nationwide coverage, with a number of sites that allows it to provide radio and television transport and broadcasting services with digital and analogue technologies to national radio and television networks, as well as to regional and local radio and television networks in various Autonomous Communities. A large part of this network was inherited from the former Retevisión government run broadcasting monopoly.

ABERTIS has been designated as an operator with significant market power (SMP) in the review of the former market 18 under the 21 May 2009 Resolution of the Spanish Telecommunications Market Commission (CMT), and subjected to new *ex ante* obligations in relation to interconnection and access questions aimed at promoting more competition in the market.

**AXIÓN** provides support services for the transport and broadcasting of TV and radio signals, with its own infrastructure throughout the entire country, although primarily focused in Andalusia, with access and colocation arrangements with other companies in the rest of the country, including ABERTIS.

The company TELEDIFUSIÓN MADRID was created in December 2005 and only operates in the Region of Madrid (Community of Madrid), where it provides support services for transport and broadcasting of local Digital Terrestrial Television (“DTT”) signals.

**II. RELEVANT MARKETS**

The report will analyse the notified operation for its effects on the following markets:

- Radio and TV audiovisual signal transport in Spain, distinguishing between the contribution and the distribution segments of the transport network.

- Provision of multiplex management and analogue and digital TV terrestrial signal distribution services to national broadcasters.
- Provision of multiplex management and analogue and digital TV terrestrial signal distribution services to regional broadcasters, especially in Andalusia and Madrid.
- Provision of multiplex management and analogue and digital TV terrestrial signal distribution services to local broadcasters, especially in various local service territories in Andalusia and Madrid.
- Multiplex management and terrestrial broadcasting of radio signals at the national level, in various regions and in different local service territories in Spain.

### **III. ASSESSMENT OF THE OPERATIONS**

In the relevant markets, the contracts signed by the operators normally involve long-term purchase exclusivity provisions, which means that competition there occurs periodically *“through the market”*.

The most direct effects of the ABERTIS/AXIÓN concentration operation on effective competition take place in the markets for carrying TV signals at the national, regional and local level, especially in Andalusia, and in the radio broadcasting markets in the service territories where both ABERTIS and AXIÓN are present. In those markets, the main competitive alternative to ABERTIS disappears in the operation.

As for the TRADIA / TELEDIFUSIÓN MADRID concentration operation, its impairment of effective competition is mainly seen in the regional and local TV broadcasting markets in the Community of Madrid, where TELEDIFUSIÓN MADRID was the main competitive alternative to ABERTIS, and, in conjunction with the disappearance of AXIÓN, it also has national effects as it means the disappearance of a potential ally for UNIREN in the Madrid zone (regional "plaque").

#### **III.1 Audiovisual signal transport services in Spain**

With respect to contribution-transport, which consists in carrying audiovisual signals from the production centre to the network headend, effective competition does appear to exist and is not affected by the notified concentration operations.

In distribution-transport, the barriers to entry are quite high, given the very large sunk cost and transition costs required to adapt the broadcasting centres, and because they are controlled by ABERTIS, which jointly offers transport and broadcasting services to all national TV operators.

In the transmission of analogue radio signals for operators who broadcast in nationwide networks, the barriers to entry are smaller.

In the carrying of audiovisual signals for regional and local TV operators, the barriers to entry are lower because the number of broadcasting facilities to be adapted is smaller.

ABERTIS, as a vertically integrated operator, has 100% of the distribution and broadcasting services in Spain for national television broadcasters and national digital radios.

AXIÓN is the main competitive alternative to ABERTIS for the provision of TV and radio broadcasting services at the national level.

The concentration operation reinforces the vertical integration and barriers to entry existing in the nationwide digital TV and radio transport and broadcasting markets, because it means the disappearance of AXIÓN as an independent competitor capable of jointly offering distribution-transport and broadcasting services, given its control over or rights to use a significant number of national broadcasting centres, especially in Andalusia.

In the case of TELEDIFUSIÓN MADRID, its vertical integration is less significant. In any event, it was the operator best placed to become a competitive alternative to ABERTIS in the provision of distribution and broadcasting services to regional and local TV operators in the Community of Madrid, and in the future even to national TV operators in relation to contracting the Madrid plaque.

### **III.2 Market in TV broadcasting services for national broadcasters**

The wholesale market in national television signal carrier services is at the present time a monopoly, inasmuch as all customers with analogue and digital broadcasting licences have contracted the carrier service with ABERTIS.

The Investigations Division believes that this operation means the disappearance of the only alternatives that have to date effectively competed with ABERTIS: AXIÓN and an association of regional operators.

It has also been seen, with a view toward future windows of opportunity, that it is not likely that an association of regional operators capable of competing with ABERTIS can emerge if it cannot count on the AXIÓN infrastructure in Andalusia and, to a lesser extent, TELEDIFUSIÓN MADRID's infrastructure in Madrid.

In the past, such association was a reality, under the name UNIREDA, and even though it eventually was not a selected tenderer for the national broadcasting contracts, there is no doubt that it exerted competitive pressure on ABERTIS. Its viability is greatly undermined by the disappearance of AXIÓN, and is also affected by the disappearance of TELEDIFUSIÓN MADRID, because the latter's broadcasting network could have served to complete the national broadcasting network in the Madrid plaque.

The Investigations Division also considers it unlikely, in the current market conditions subsequent to the CMT Resolution of 21 May 2009, that a new broadcasting operator will emerge, as it has been seen that there remain important barriers to entry in the national TV broadcasting market that are not offset by *ex ante* regulation.

In particular, as has been previously borne out, with the current access obligations set by CMT, and even if those obligations were to generalise the possibility of centre-to-centre interconnection, the barriers to entry would continue to be very significant. Specifically, the sunk costs of making this access a reality are very high, with the consequent risk of failing to recover the capital outlays made unless the customer base is enlarged. The ABERTIS economies of scale and scope are hard to match and there are other entry barriers, such as the long duration of the contracts, en bloc contracts

and transition costs, which hinder the entry of new operators or the expansion of existing ones.

In view of all of the above, it seems obvious that the competition “*through the market*” that AXIÓN has been waging at the national level with ABERTIS, and the possibility of completing UNIREDA with the Madrid plaque of TELEDIFUSIÓN MADRID, would both disappear with the notified concentration operations, and there is no alternative competitive pressure strong enough to discipline ABERTIS's behaviour in the affected markets given the barriers to entry that exist. This could give rise to a lack of incentives for ABERTIS to make truly competitive offers to national TV operators, a situation that no doubt would significantly undermine effective competition.

### **III.3 Market in television broadcasting services for regional broadcasters, especially in the Autonomous Communities of Andalusia and Madrid**

The wholesale market of the television signal carrier service in Andalusia is currently a monopoly, given that the lone customer that is now broadcasting in the region, RTVA, contracts the carrier service with AXIÓN.

Furthermore, the wholesale market for the TV carrier service in the region of Madrid is also in a monopoly situation, as the only customers with broadcasting licences in analogue or digital, Telemadrid and Onda 6 TV, contract the carrier service with ABERTIS.

In Andalusia, ABERTIS has shown itself to be the best placed alternative competitor and participated in the public tenders for the two Andalusian multiplexes. In Madrid, the Investigations Division has found that TELEDIFUSIÓN MADRID, if the concentration operation does not go ahead, will participate in that tender and exert effective competitive pressure on ABERTIS.

All of the above clearly shows that competition *through the market* at the regional level is significantly reduced by the notified concentration operations, especially in the Autonomous Communities of Andalusia and Madrid, but also in Asturias, Cantabria, La Rioja, Aragón, Catalonia, Castilla y León, Extremadura, Balearic Isles and Canary Islands. This could lead to a lack of incentives for ABERTIS to make genuinely competitive offers to the regional TV operators who broadcast or plan to broadcast in the future in those regions.

### **III.4 Market in TV transmission services in local service territories, especially in Andalusia and Madrid**

The operation will result in a *quasi*-monopoly in the wholesale markets in terrestrial local TV broadcasting services in the regions of Andalusia and Madrid.

In Andalusia there is no digital broadcasting at present, and in the analogue segment AXIÓN would add [...] local Andalusian channels to ABERTIS's portfolio of [...] channels, making it the main operator in that region.

In the Madrid region TELEDIFUSIÓN MADRID will control nearly all of the digital market, and in the analogue segment ABERTIS is the principal operator, as it has the customers with the greatest growth prospects and offers the best quality standards in analogue broadcasting in the region.

With its acquisition of TELEDIFUSIÓN MADRID, ABERTIS would achieve major market power in the local markets of the Madrid region, and would, above all, strengthen its position in the digital segment, the one that truly matters with the analogue phaseout.

With respect to the regions where at present there are no alternative broadcasting operators to ABERTIS, the disappearance of AXIÓN also reduces effective competition for future tenders of local DTT broadcasting services there, given AXIÓN's goal of becoming a national operator.

So ABERTIS would thus shore up its position before the final analogue phaseout in the local service territories of these Autonomous Communities, and in most of those areas it would become the only operator with the customer base, infrastructure and experience needed to be able to make offers to digital local broadcasters who request those services.

### **III.5 Market in radio transmission services**

The operation will result in a monopoly in 20 local service territories (demarcations) that will see the disappearance of the alternative competitor best positioned to exert competitive pressure on ABERTIS.

The concentration will also strengthen ABERTIS's position in the rest of the local demarcations in which there is overlap, with the consequent elimination of the best placed alternative competitor, AXIÓN.

In those service territories, the Investigations Division believes that self-provision or contracting with a third operator cannot be ruled out as an alternative that is in principle viable. Nevertheless, it must be borne in mind that in some cases the only viable alternative to AXIÓN may be ABERTIS. Of special importance is the case of the SER network, which sold its transmission network to AXIÓN, with which it currently contracts the transmission service.

In this regard, it should be noted that the CMT's *ex ante* regulation of market 18 only applies to the transmission of TV signals and therefore does not cover radio signal transmission.

So the concentration operation would remove AXIÓN as an independent competitor, and as the main competitive alternative to ABERTIS in the contracting of analogue radio network distribution and transmission services at the national level.

As for digital radio, the Investigations Division believes the competitive situation is similar to the one seen in the TV transmission market, in that major entry barriers impede self-provision and make ABERTIS the lone operator, eliminating the main alternative competitor, AXIÓN.

#### **IV. ASSESSMENT OF POSSIBLE CONDITIONS**

In relation to the entry barrier posed by the difficulties faced by an alternative operator to independently carry audiovisual signals to each of the ABERTIS transmission facilities to which access is desired, conditions need to be imposed that would allow it to replicate the joint offers of audiovisual distribution and transmission services that AXIÓN and TELEDIFUSIÓN MADRID had been offering, directly or indirectly, to their customers in Andalusia and Madrid.

In relation to radio distribution and broadcast services, the conditions to be imposed should be less strict than those for the equivalent television distribution and transmission services.

For television transmission services, the *ex ante* regulation only allows access to the ABERTIS infrastructure in the colocation arrangement, and with limited coverage in the centre-to-centre interconnection arrangement. In order to allow entry by new operators that can replicate the competitive pressure exerted by AXIÓN and TELEDIFUSIÓN MADRID on ABERTIS, conditions will have to be imposed that generalise centre-to-centre interconnection in Andalusia and Madrid, where AXIÓN and TELEDIFUSIÓN MADRID already had rolled out TV transmission networks.

Furthermore, in order to be able to replicate the offers that AXIÓN and TELEDIFUSIÓN MADRID could offer to national or regional television operators in these geographic zones, ABERTIS must be obliged to provide a complete transport and broadcasting wholesale service which allows, by means of interconnection with ABERTIS at one or various points, a third party operator to immediately commence providing regional or national TV distribution and transmission services that cover the regions of Andalusia and Madrid.

This would make it feasible for UNIRED or other alliances of regional broadcasting operators to complete their offers to national television operators with the Madrid and Andalusia plaques, as they would have been able to do if AXIÓN and TELEDIFUSIÓN MADRID were to continue as independent operators in the markets.

In addition, the above conditions would also allow replication of the competitive pressure that AXIÓN and TELEDIFUSIÓN MADRID had been exerting on ABERTIS in relation to converting local and regional televisions in Madrid and Andalusia into customers.

In relation to radio distribution and transmission services, there have to be introduced a set of wholesale access obligations similar to those applied for TV signals. However, it is proportionate to limit the obligations of allowing access to the infrastructure used by AXIÓN for radio broadcasting, because the competition problems detected for radio transmissions are not as great.

A limit also needs to be placed on the duration of the contracts with the TV or radio operators contributed by AXIÓN and TELEDIFUSIÓN MADRID, giving the audiovisual operators a right of unilateral rescission as from the fifth year of life of those contracts.

Furthermore, in order to allow periodic competition to exist and prevent ABERTIS from blocking the entry of new competitors in relation to attracting new customers, the following needs to be done:

- Prevent ABERTIS from using the possible rights of preferential acquisition or extension to which it may be entitled under its contracts or under those acquired via AXIÓN or TELEDIFUSIÓN MADRID.
- Prevent ABERTIS from including rights of preferential acquisition or extension in its future contracts.
- Limit the term of future contracts to five years or, at least, grant a right of unilateral rescission without any penalty for the audiovisual operator as from the fifth year or whenever an amendment is made.

Also, given that ever since ABERTIS signed the first sale-purchase agreement with the AXIÓN shareholders, the competitive pressure exerted by that entity on ABERTIS has been much weaker, the contracts that ABERTIS or AXIÓN have signed during this transitional period must be allowed to go out onto the market again so that they can benefit from the competitive situation existing prior to the two concentration operations.

Therefore, the national televisions and regional and local televisions in the Autonomous Communities where AXIÓN or TELEDIFUSIÓN MADRID are the main alternative competitor to ABERTIS, and network radio broadcasters, that have signed contracts for the provisions of distribution or broadcasting services with ABERTIS or AXIÓN in the transitional period, must be given a right of unilateral rescission with no penalty as from the time the conditions are effectively implemented, so that they can call a new tender if they so wish.

In any event, in order to prevent ABERTIS from exploiting its heightened market power after the acquisition of AXIÓN and TELEDIFUSIÓN MADRID, an obligation has to be imposed on ABERTIS to respect the terms of service being provided to date by ABERTIS, AXIÓN and TELEDIFUSIÓN MADRID. For so long as these conditions remain in effect, ABERTIS should not be allowed in these cases to apply annual increases in the prices for those services in excess of the CPI increment, a ceiling which ABERTIS has in fact been respecting in its contracts.

For these same reasons, ABERTIS must undertake, when so requested, to present offers for regional plaques.

Lastly, the duration of the conditions to be imposed should be lengthened from eight to ten years. A term of ten years, in combination with the penalty-free unilateral rescission rights, could facilitate the existence of two windows of opportunity in the television broadcasting markets considered while the conditions are in force. Conversely, this duration for the conditions could be limited to five years in the case of the access obligations related to the AXIÓN radio broadcasting sites, because the competition issues detected there are less significant.

In view of all of the above, the Investigations Division has prepared a proposal of conditions that it believes will resolve the competition problems detected in the notified concentration operations. The design of these conditions has taken into consideration both the commitments proposed by ABERTIS in relation to the ABERTIS / AXIÓN and TRADIA / TELEDIFUSIÓN MADRID concentration operations, and the *ex ante* regulation now prevailing in the markets covered by this Report, which was approved by the CMT in its Resolution of 21 May 2009.

## **V. PROPOSAL**

In view of the foregoing, it is proposed that **authorisation of the concentration be subordinated to fulfilment of the following conditions**, which must be complied with by ABERTIS TELECOM, S.A., TRADIA TELECOM, S.A. and all companies in the ABERTIS group:

### **A) FIRST CONDITION: TELEVISION SIGNAL TRANSPORT AND BROADCASTING MARKET**

#### ***A.1) Complete TV signal transport and broadcasting service for the Andalusia and Madrid regional plaques***

ABERTIS must offer a full wholesale service for transport and broadcasting of televisions signals for the regional plaques of Andalusia and the Community of Madrid that meets the coverage requirements of the national and regional television services.

- ABERTIS must offer a full wholesale service including distribution-transport and broadcasting of signals, by means of delivery of the signal to a single interconnection point for the two regional plaques or through a single point in each regional plaque.
- ABERTIS must offer a wholesale broadcasting service without including the distribution-transport service for the Andalusia and Madrid regional plaques. This wholesale service will allow joint contracting of an interconnection service for the broadcasting service in all facilities of the two regional plaques or in either of them individually. It will be provided in conditions equivalent to those established for the broadcasting interconnection per centre service described in section A.2). ABERTIS must offer the colocation and interconnection service for the television distribution-transport service described in section A.3) to operators who so request of those using the current wholesale service.

Pricing for these wholesale services is based on the production costs, and will be proportional to the prices of the national service and to the prices for the regional service in other regional plaques, and must be justified objectively on the basis of factors such as number of broadcasting centres of each type that exist in the regional plaque.

For wholesale services intended for the national digital television signal transport and/or broadcasting service, the allocation, if applicable, of costs irrespective of the geographical scope of the services to the price of the wholesale service for each regional plaque and for the two plaques in aggregate must be done proportionately according to the number of centres in the plaque or other objective elements.



ABERTIS shall publish Standard Benchmark Conditions according to the applicable general conditions established in this resolution, adapted to the specific features of the wholesale services envisaged in this section.

The maximum time limit for fulfilling and carrying out the requests for provisions of the full service will be one month from the time of the request.

The maximum time limit for fulfilling requests for provision of the broadcasting service without the distribution-transport service will be one month from the time of the requests.

### **A.2) Centre interconnection service for the TV broadcasting service in centres located in the regions of Andalusia and Madrid**

ABERTIS must offer access to each of its television broadcasting centres in the regions of Andalusia and Madrid in the interconnection arrangement, for use in the provision of broadcasting services for national, regional and local television services.

The interconnection will refer to the physical and logical connection between the third party's networks and those of ABERTIS at those points of the television broadcasting network where such interconnection is the most viable. Interconnection of the other operator's network is considered viable in the TV broadcasting multiplexes and antennas, without prejudice to the right of the parties to freely and on a non-discriminatory basis agree to make the interconnection at other access points.

ABERTIS will provide this service in the conditions established for interconnection arrangements in the 21 May 2009 Resolution of the Telecommunications Market Commission (CMT) which approved the definition and analysis of the wholesale market of the television signal carrier service, the designation of operator with significant market power (SMP) and imposition of specific obligations, and provided for its notification to the European Commission. Said access via interconnection will be offered in all ABERTIS, AXIÓN and TELEDIFUSIÓN MADRID centres and locations, including those they own and those over which they have rights of use, and which are used by those operators for providing television broadcasting services in Andalusia and Madrid, and will not be subject to the limitations on the availability of this arrangement provided in the above-cited CMT Resolution.

ABERTIS must offer the colocation and interconnection service for the television distribution-transport service described in section A.3) to the operators who are currently using the wholesale service that so request, in those centres or locations where the relevant access has been requested.

ABERTIS shall publish Standard Benchmark Conditions according to the applicable general conditions established in this resolution, adapted to the specific features of the wholesale services envisaged in this section.

The maximum time limit for fulfilling the requests for provision of these services will be one month after the requests.

### **A.3) Colocation and interconnection service for the television distribution-transport service**

ABERTIS will be obliged to offer access to each of its television broadcasting centres in the regions of Andalusia and Madrid under the colocation arrangement for the units needed for distribution-transport and, where technically feasible, an interconnection service for that transport service.

These services may be requested by operators at those sites where they have requested access to one of the wholesale interconnection services for the broadcasting services indicated in sections A.1) and A.2) above, and will be used for providing the national, regional and local TV transport and broadcasting services.

These obligations will apply to the ABERTIS, AXIÓN and TELEDIFUSIÓN MADRID centres and sites, whether owned or subject to rights of use.

If there are limitations in certain centres for offering the colocation service and the interconnection service is also not feasible, ABERTIS will be obliged to offer in all centres at least one of those two services when it receives an access request, whether by conditioning or expanding the space, or by interconnection.

Colocation will consist in leasing the space for the physical placement of the operators' equipment in the available physical spaces existing in the infrastructure and relevant centres. It will also include, in general terms, the provision, at the centre where the colocation takes place, of access to the power point, security conditions and conditioning needed to install the equipment used by the operator who requests access. The colocation service may include an operating and maintenance service by ABERTIS for the collocated equipment.

The interconnection service for the transport service will allow operators who so request to be able to use ABERTIS's equipment at the different sites destined for providing the distribution-transport service, provided use of that equipment is technically feasible. That equipment will include, for example, the systems for reception at the sites of signals distributed by satellite, or the use of antenna and other equipment for receiving signals transmitted by radio links in the fixed service. This interconnection service will allow an operator to roll out or contract its own signal transmission network and to use the ABERTIS equipment located at the sites for reception of the signals, where such use is technically feasible.

The wholesale services envisaged in this section must be offered at reasonable prices. The price set by ABERTIS for providing these services must be proportionate and based on objective criteria.

ABERTIS shall publish Standard Benchmark Conditions according to the applicable general conditions established in this resolution, adapted to the specific features of the wholesale services envisaged in this section.

The maximum time limit for fulfilling the requests for provision of these services will be one month after the requests.

*A.4) The obligations established in this section will be in force for 10 years after this Resolution becomes final in the administrative jurisdiction.*

## **B) SECOND CONDITION: MARKET IN TRANSPORT AND TRANSMISSION OF RADIO BROADCAST SIGNALS**

### *B.1) Wholesale service of access to radio broadcasting transmission centres*

ABERTIS will be obliged to offer access to each of the AXIÓN radio broadcasting transmission centres located in the national territory under the colocation arrangement and, where technically feasible, an interconnection service.

These services have to be provided in order to allow provision of the transport and/or broadcasting services for radio transmissions in their different classes (analogue and/or digital) and frequencies, where technically feasible according to the characteristics of the ABERTIS sites and equipment.

These obligations will apply to AXIÓN centres and sites, including those which it owns and those for which it holds rights of use.

Fulfilment by ABERTIS of this condition will allow operators and broadcasters to contract for each requested site, at their choice:

- A full service for the joint distribution-transport and broadcasting service for radio broadcast signals in each centre. Through this service ABERTIS will be in charge of transporting the signal from the local production centre to the site and for its subsequent broadcast.
- An interconnection service for the radio broadcast service and an equipment colocation service for the radio broadcast distribution-transport service.
- A colocation service for radio signals distribution-transport and broadcasting equipment.

If there are limitations in certain centres for offering the colocation service and the interconnection service is also not feasible, ABERTIS will be obliged to offer in all centres at least one of those two services when it receives an access request, whether by conditioning or expanding the space, or by interconnection.

Colocation will consist in leasing the space for the physical placement of the operators' equipment in the available physical spaces existing in the infrastructure and relevant centres. It will also include, in general terms, the provision, at the centre where the

colocation takes place, of access to the power point, security conditions and conditioning needed to install the equipment used by the operator who requests access. The colocation service may include an operating and maintenance service by ABERTIS for the collocated equipment.

The interconnection will refer to the physical and logical connection between the third party's networks and those of ABERTIS at those points of the radio signal broadcasting network where such interconnection is the most viable. Interconnection of the other operator's network is considered viable in the radio broadcasting multiplexes and antennas, without prejudice to the right of the parties to freely and on a non-discriminatory basis agree to make the interconnection at other access points.

The wholesale services envisaged in this section must be offered at reasonable prices. The price set by ABERTIS for providing these services must be proportionate and based on objective criteria.

ABERTIS shall publish Standard Benchmark Conditions according to the applicable general conditions established in this resolution, adapted to the specific features of the wholesale services envisaged in this section.

The maximum time limit for fulfilling the requests for provision of these services will be one month after the requests.

***B.2)** The access obligations will be in force during five years after this Resolution becomes final in the administrative jurisdiction.*

## **C) THIRD CONDITION: GENERAL CONDITIONS FOR PROVISION OF THE WHOLESALE ACCESS SERVICES REFERRED TO BY THIS RESOLUTION**

### **C.1) General conditions in which access must be provided**

Any operator and/or broadcaster may request and obtain access to use of the infrastructure, on the terms provided in the preceding sections.

ABERTIS cannot deny access to or use of the infrastructure, except with the prior approval of the CNC.

The CNC will approve the conditions for access to or use of the infrastructure in relation to those issues not specifically provided for in this resolution.

In relation to the transport and/or broadcasting of national, regional and local television signals, and of radio broadcasts, access means ABERTIS making available to third party operators and and/or broadcasters the relevant resources or necessary services so that the other operator can use all elements needed to perform its services in the service territory, on the conditions established in this Resolution for each of the forms of

access, the ones set out in the Plan of Actions and those approved, where such is the case, by the CNC.

For the purposes of this resolution, consideration will only be given to access requests that refer exclusively to transport and/or broadcasting of television signals nationally, regionally and locally, and of radio signals, in accordance with the conditions established for each type of access envisaged in this Resolution. This Plan will not apply to access requests made by operators of other telecommunications services that can be hosted in the ABERTIS infrastructure affected by this Resolution.

In relation to this Resolution, the term infrastructure means all elements of the broadcasting and retransmission centres used to provided the specified services, including, therefore, the sites and the equipment and resources associated with them for each type of access that has been established.

ABERTIS must attend to the access requests envisaged in this Resolution in transparent and non-discriminatory conditions. Those requests may only be rejected on objective and reasoned grounds, upon prior approval of the CNC, and those grounds will form part of the Standard Benchmark Conditions.

In particular, ABERTIS will adopt the necessary measures for provision of the wholesale access services indicated in this Resolution, and provide third parties with services and information equivalent to those it provides to itself or to its subsidiaries and affiliates, with the same conditions and timing.

For purposes of verifying fulfilment of the non-discrimination obligations, ABERTIS will forward the agreements it signs for access to or use of infrastructure under the conditions envisaged in this Resolution no later than 10 days after they are signed.

ABERTIS must keep separate accounts for the various wholesale services indicated in this Resolution. Furthermore, ABERTIS must make sure that its analytical cost accounting allows sufficient breakdown of the costs attributable to that company's infrastructure and equipment in the regions of Andalusia and Madrid versus those that it has in the rest of Spain.

The technical characteristics, quality and pricing of the wholesale services provided for in this resolution be such as allow any operator to match the services offered by ABERTIS in the respective coverage areas, and the retail offers made by the latter operator for the various related retail services.

## **C.2) Standard Benchmark Conditions**

ABERTIS must present a proposal for Standard Benchmark Conditions for the different types of access referred to by this resolution, in line with the minimum content indicated below, within three months after the approval of the Plan of Actions.

Operators and/or broadcasters who request access may choose to submit to the Standard Benchmark Conditions, unless they agree otherwise, freely and in a non-discriminatory manner.

The Standard Conditions and their content may be modified by the CNC if required for proper compliance with the conditions established in this Resolution.

ABERTIS must keep the Standard Benchmark Conditions up to date at least on a half-yearly basis. Nevertheless, any modification made in the lists of centres and equipment where access is provided for the different access types (additions and retirements of infrastructures and their modification) must be available to third parties and notified to the CNC within seven business days after the modification in question is made. In the notice to the CNC, ABERTIS must give a statement of the reasons for any removal of sites from the infrastructure list.

The Standard Benchmark Conditions must be available to any interested operator and/or broadcaster who so requests, and may be deposited with the CNC for consultation by such operators on the terms stipulated in the Standard Conditions.

The Standard Benchmark Conditions for each of the access types envisaged in this resolution will include the information needed to allow operators who so request to effectively exercise their rights of access to the stipulated wholesale services, including at least the following:

I. Conditions of the infrastructure access or use services.

- a) Definition of the characteristics of the services offered.
- b) For the colocation and interconnection wholesale services, the list of centres, equipment and infrastructure where access will be available and their main characteristics. For the colocation and interconnection services, the information to be provided will be at least the information provided for these two access types in the CMT Resolution of 21 May 2009 which approved the definition and analysis of the wholesale market of the television signal carrier service, the designation of operator with significant market power (SMP) and imposition of specific obligations, and provided for its notification to the European Commission.
- c) Technical conditions related to access to and use of the infrastructure and, in particular, definition of the interconnection points and technical parameters for delivery of signals.

II. Procedures for responding to access requests

- a) Procedure for requesting and providing access, criteria for handling access requests, in particular, when there are limitations for the provision of colocation and/or interconnection services, and objective criteria for when restrictions on access may be adopted.

- b) General conditions for studying access feasibility, including that the operator may inspect the sites where the colocation and/or interconnection services are offered.
- c) Conditions for access by the authorised personnel of the operator to whom access has been granted.

### III. Reporting and disclosure systems.

- a) Conditions for publicity of the Standard Benchmark Conditions
- b) Conditions for access to information on the infrastructure and services

### IV. Supply conditions.

- a) Conditions for responding to requests for services and resources, service level agreements, resolution of failures, procedures for resuming normal service and quality parameters for the service.
- b) Standard contract forms for access, including standard conditions: time limits for providing access, associated resources and repair of failures and, where applicable, the compensation for failing to comply with those time limits; procedures for locating equipment and formulating claims and maintenance conditions.
- c) Prices or pricing formulas for each service, with sufficient breakdown and detail and covering initial prices and, if applicable, recurring prices, as well as the other economic conditions that apply. The prices for each access type will conform to the specific provisions established in this Resolution.

## **D) FOURTH CONDITION: CONDITIONS REGARDING THE CONTRACTS FOR TRANSPORT AND/OR BROADCASTING OF TELEVISION AND RADIO SIGNALS**

In relation to the contracts in force that ABERTIS, AXIÓN or TELEDIFUSIÓN MADRID have signed for providing national, regional or local television signal transport and/or broadcasting services in the Autonomous Communities of Andalusia, Madrid, Asturias, Cantabria, La Rioja, Aragón, Catalonia, Castilla y León, Extremadura, Balearic Isles and Canary Islands, and radio signal transport and/or broadcasting services with larger than local coverage (i.e., that affect more than one site), ABERTIS will be subject to the following conditions:

- ABERTIS must not exercise rights of first refusal or redemption or any options for renewing or extending the life of those contracts.
- ABERTIS will not be allowed to amend the existing contracts to include services in addition to or complementing the ones already contracted, unless requested by the counterparty. In the latter case, ABERTIS will give the counterparty in those contracts a right of unilateral rescission with no penalty or indemnification.
- The new contracts signed by ABERTIS in the future must not have a term of more than five years, including any extension mechanism, option or right of first refusal and redemption, unless the counterparty desires a longer term. In the latter case,

ABERTIS will grant the counterparty in those contracts right of unilateral rescission with no penalty or indemnification as from the fifth year of the contract.

- ABERTIS will offer the holders of contracts in force signed by AXIÓN and TELEDIFUSIÓN MADRID the option of reducing the term of those agreements to five years, without modifying the rest of the terms and conditions established therein, with no penalty or indemnification.
- Once the conditions of this operation have been implemented and are in effect, ABERTIS will offer the possibility of penalty-free, indemnification-free termination of all of the contracts signed or that had been modified by ABERTIS or AXIÓN as from the date on which the two operators signed the sale-purchase agreement. The Investigations Division will determine the date on which the conditions of this operation are considered to have been effectively implemented for the purposes provided for in this condition; such date may refer to the different markets related to the access wholesale services covered by this Resolution, identifying the contracts affected in each market.
- In the case of the national digital terrestrial television signal transport and/or broadcasting service, ABERTIS must offer the service per regional plaques if so requested by broadcasters or by the parties who contract the service.
- ABERTIS must ensure that the services contracted will continue to be provided in conditions of coverage, quality, continuity and prices that are comparable to those it has been offering to date under the contracts referred to in this section, where so requested by broadcasters. During the time period established for these conditions, ABERTIS will be obliged to continue providing the contracted services and will not increase the prices of its services by more than the yearly CPI.

The obligations established in this section will be in force for 10 years after this Resolution becomes final in the administrative jurisdiction.

#### **E) FIFTH CONDITION: MONITORING COMPLIANCE WITH THE CONDITIONS ESTABLISHED IN THIS RESOLUTION**

The Investigations Division will be responsible for monitoring compliance with the conditions established in this Resolution. The Investigations Division will draw up an annual report on enforcement of the conditions established in this Resolution.

Pursuant to article 41.1 of the Spanish Competition Act 15/2007 of 3 July 2007, the CNC may ask the Spanish Telecommunications Market Commission (CMT) for the cooperation it deems necessary for enforcing the conditions established here.

ABERTIS must provide the Investigations Division will all information needed for performing its enforcement functions in relation to these conditions, maintaining the confidentiality of all such information that contains trade secrets.

#### **F) SIXTH CONDITION: PLAN OF ACTIONS**



Within two months after this Resolution becomes final within the administrative jurisdiction for ABERTIS, the latter must submit to the Investigations Division a detailed plan of actions and timetable for implementing the above conditions, unless ABERTIS demonstrates before that time that it is not going to execute any of the concentration operations authorised subject to conditions hereunder.

The Investigations Division may introduce such changes as are necessary for proper fulfilment and monitoring of these conditions.

#### **G) SEVENTH CONDITION: MODIFICATION OF THE CONDITIONS AND TIME PERIODS STIPULATED IN THIS RESOLUTION**

The CNC Council, at the request of ABERTIS, and upon prior report from the Investigations Division, may approve modifications of the conditions established in this resolution and in the timetable for their application, in the event of a significant change in the structure or regulation of the markets considered.