

SUMMARY OF MERGER C/0612/14 TELEFÓNICA/DTS

The CNMC approved the acquisition of DTS by Telefónica (C/0612/14 TELEFÓNICA/DTS) after a process lasting nearly six months, on the grounds that the remedies offered by the notifying party ensure that the problems posed by the merger in the pay television market and others (electronic communications) will be adequately addressed.

The remedies offered are divided into three main areas: pay television market; markets for the wholesale commercialization of content and channels; and terms of access to Telefónica's Internet network. The operator must make 100% of its premium channels available to its competitors, with each competitor being entitled to transmit 50% of them, on terms which ensure that Telefónica's retail offerings including those channels are replicable. The remedies offered will be in force for five years, a term which may be extended for a further three years and will be subject to monitoring by the CNMC.

The merger was notified to the CNMC on 17 October 2014, having previously been referred back to Spain by the European Commission by the decision adopted on 22 August 2014. On 12 November 2014, the second phase of the procedure was opened, given the competition problems generated by the merger. On 25 February 2014, Telefónica proposed a number of remedies aimed at overcoming obstacles to maintaining effective competition arising from the merger transaction. In the course of the procedure, Telefónica modified its initial proposal until, on 14 April 2015, it submitted a definitive proposal of remedies, which the CNMC considered sufficient to enable it to authorise the merger.

The remedies offered by Telefónica are divided into three main areas:

a) Remedies related to the pay television market in Spain:

Telefónica undertakes not to restrict the mobility of its current and future pay television customers, establishing limitations on its customer retention and minimum term policies. Specifically, it will process requests from its customers to end their subscription within a limited period of time (a maximum of 15 days for customers with unbundled services, for example); it will waive the requirement for and application of minimum term clauses under certain circumstances; and it will not attempt to win back certain types of former customers for a limited period of time (two months) from the day when they request to end their service.

Telefónica also undertakes to ensure that current DTS contracts with other electronic communications operators, to distribute its television offering by satellite, will be maintained and complied with in full, until the current contracts expire. Once each contract expires, the service must be extended for a period of six months and Telefónica must also refrain from making active sales to customers who acquired this service through third operators.

b) Remedies related to the markets for the wholesale commercialization of specific audiovisual contents and television channels in Spain:

Telefónica will allow third pay television operators access to a wholesale offer of premium channels (those showing previously unseen, exclusive content from the major film and television producers or live sporting events including first division football (Liga de Primera División), Spanish championship football (Copa de Su Majestad el Rey), the Champions League, the Europa League, the World Cup, the Basketball World Cup, Formula 1, Moto GP and the Olympic Games).

Each third pay television operator will be able to access a maximum of 50% of the channels included in the wholesale offer and will be free to choose any combination of channels within this wholesale offer.

The prices of the wholesale offer must ensure that Telefónica's retail offers are replicable and must prevent situations of margin squeeze.

Moreover, exclusive exploitation of contents acquired by Telefónica is limited to two years and to certain types of transmission windows, while in relation to other windows (such as video on demand for films and series) the merged entity will not be able to acquire exclusive contents. Also, as a general rule, Telefónica will not be able to acquire exclusive transmission rights which it is not going to use. And the merged entity must limit the duration of its content acquisition contracts to three years and must waive any rights of first refusal relating to content.

These remedies will not apply to content produced by the merged entity itself.

In addition, Telefónica undertakes to transmit channels edited by third-party operators, under certain conditions, over its pay television platform. Moreover the merged entity will not be able to acquire exclusive transmission rights for those channels edited by third parties.

c) Remedies related to access to Telefónica's Internet network in Spain:

In the case of access to its network, Telefónica has the ability and the incentives (it can block or restrict access to its network and to its customers) to substantially reduce competition from third-party Internet-based pay television operators.

In that regard, the remedies approved allow those Internet-based pay television providers to access Telefónica's broadband customers on terms which allow them to compete effectively.

Telefónica undertakes to provide a service giving access to its Internet network in Spain with sufficient capacity and quality assurances for third-party operators. Telefónica will ensure there are at least three routes of access to its Internet network where congestion must not exceed 80%.

Moreover, Telefónica undertakes not to employ network and traffic management techniques in Spain which could, in a discriminatory manner, degrade the flow of third-party video or similar data over its Internet network.

Telefónica also undertakes to negotiate interconnection agreements relating to its Internet network, for the delivery of audiovisual content to its fixed or mobile broadband end users, on equitable, reasonable, transparent, objective and non-discriminatory terms.