

## PRESS RELEASE

### **The CNMC fines Mediaset and Atresmedia for anti-trust practices in the marketing of television advertising**

- The commercial policies used by the two television networks to sell television advertising violate competition rules, and have the effect of limiting the ability of other television networks to compete in collecting advertising revenue.
- The ruling requires both networks to modify their current system for marketing advertising within three months.
- The total fine for the two television networks amounts to 77.1 million euros.

**Madrid, 13 November 2019.** The CNMC has fined Mediaset and Atresmedia for anti-trust practices in the marketing of television advertising. Both networks are required to modify this commercial strategy within three months. The amount of the fine totals 77.1 million euros. ([S/DC/0617/17](#))

Mediaset and Atresmedia have developed commercial policies for the sale of television advertising whose result has been to consolidate on their channels a combined share that exceeds 85% of the entire market. By doing so, they limit the ability of other television networks to collect advertising revenue, with the ensuing risk of being eliminated from the market.

To this end, Mediaset and Atresmedia generally charged their advertisers a high *minimum investment fee*, which accounted for a significant percentage of their general advertising campaign. Failure to comply with said investment commitment could be penalised.

Both networks paid incentives to media agencies by way of additional premiums. This remuneration to intermediaries is conditioned upon each agency reaching a certain investment volume or share of all the advertising billed in Mediaset and Atresmedia. The income from the additional premiums is a significant part of the income statement of the agencies.

By using these two practices, the two major networks enticed advertisers and agencies to consolidate much of their television advertising budget in Mediaset and Atresmedia.

In addition, the two networks regularly bundle advertising into *channel packages or modules*. Each module includes one of the channels with higher viewership (more

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appealing and very difficult for advertisers to replace) with other, lower rated channels in each network. By doing this, Mediaset and Atresmedia were able to consolidate advertising on their lower rated channels as well.

The sale of advertising through channel packages is reinforced by the use of simulcast, which involves the simultaneous broadcast of advertising on the network's various channels to coincide with the advertising on its top-rated channel.

The combined effect of the aforementioned practices is that the remaining television operators (other national, regional, pay TV and other networks) have problems competing on equal terms with the equivalent channels, in terms of ratings, that are owned by Mediaset and Atresmedia. Therefore, the remaining operators are excluded from the television advertising market.

This restrictive effect also has a negative impact on the demand for audiovisual content in Spain and on competition in the free-to-air television market. This is because the difficulty in capitalising on audiences limits the ability of third-party operators to acquire appealing audiovisual content that allows them to improve their ratings.

These actions are considered *vertical single-branding agreements that impose a minimum purchase requirement* (as defined in the European guidelines on vertical agreements).

Each television group was engaged in this type of agreement independently, although the commercial conditions applied by both networks are very similar. Its cumulative nature is considered when assessing the effects of this practice, since it accounts for 85% of the television advertising market in Spain (over 40% each).

## **Sanctions**

The illegal conduct sanctioned infringes Article 1 of Law 15/2007 and Article 101 of the Treaty on the Functioning of the EU. The total amount of the fine is 77.1 million euros. Mediaset España Comunicación SA and Publiespaña SAU are jointly liable for the payment of a 38.9-million-euro fine, while the fine for Atresmedia Corporación de Medios de Comunicación SA and Atres Advertising SLU totals 38.2 million euros.

This Resolution cannot be appealed through administrative channels, though the companies may bring an application before the National Court within two months after the day the Resolution is filed.

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## **Change in commercial conditions**

The resolution requires both networks to cease their behaviour and adapt their commercial and contractual relationships within three months.

The monitoring of resolutions is a mechanism provided for in the Anti-Trust Law (LDC). To facilitate this task, the two large networks have to document and save a breakdown of their commercial offers, along with the various commercial agreements that they sign with advertisers or media agencies. They must also provide to the Competition Directorate all the information that is requested by it, as often as necessary and in the manner specified by it. This ensures that the obligations adopted to preserve competition in the markets are complied with.

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