

## PRESS RELEASE

### **The CNMC confirms the presence of indications that Telefónica violated commitments it agreed to after the purchase of DTS**

- Telefónica incorrectly calculated the fixed costs of the 'Movistar Partidazo' channel in its wholesale offer for pay-TV channels (in the 2016/2017 season), when the initial distribution was made in July 2016 among the operators who purchased it. Although Telefónica later acknowledged its mistake, in September 2018, the operators had to bear higher costs than corresponded to them for said channel.

**Madrid, 19 June 2019** - The CNMC (National Commission on Markets and Competition) has called for the initiation of disciplinary proceedings against Telefónica for breach of the commitments it made after the Telefónica/DTS merger operation in April 2015 ([VC/0612/14](#)).

This resolution is part of the CNMC's monitoring efforts to verify that Telefónica is complying with the commitments it offered in exchange for approval of its takeover of DTS (formerly Sogecable) when it acquired the 56% of DTS that the Prisa group owned. This monitoring is one of the mechanisms to ensure compliance with the obligations (conditions, commitments and sanctions) that are adopted to preserve competition in the markets.

On 22 April 2015, [the CNMC authorised the merger of Telefónica and DTS](#), subject to Telefónica fulfilling a series of commitments related to the pay-TV market, including the wholesale marketing of an annual package of contents consisting of premium channels, the replicability of the products with these channels and its customers' non-discriminatory online access to pay-TV content from OTT operators.

In the case of the pay-TV channels, Telefónica must have a wholesale offer so that its competitors can access its pay-TV channels with premium content (film premieres, national and international sports competitions, etc.), and market them through their own pay-TV platforms. When calculating how much the competitors pay to access the football and motorsport channels of the wholesale offer, Telefónica considers the so-called *guaranteed minimum cost* (GMC).

The football and motorsport channels are subject to a proportional distribution, between Telefónica and the operators that purchase them, of the fixed costs of the

*Unofficial document intended for the media. Not binding on the CNMC*

*The full text of the report approved by the Board is published on the website of the CNMC once any confidential elements are redacted, and is available at the link in the press release.*

*Reproduction authorised only if the source is cited.*

exclusive broadcast rights, as well as of production and other costs (this is the GMC). This proportional distribution is based on predetermined criteria in the commitments that include the subscribers' fee for each operator's pay TV, as well as the purchasing potential on the basis of their networks.

In the case of this monitoring resolution ([VC/0612/14](#)), the CNMC has analysed Telefónica's compliance with a very specific issue involving commitments. Specifically, the one related to the wholesale offer of channels owned by Telefónica and, in particular, with respect to the setting and distribution by Telefónica of the *guaranteed minimum cost* (GMC) applicable to the football channel and the motorsport channels of its second wholesale offer among the operators that purchased these channels. The commitments stated that the wholesale offer of Telefónica's own premium channels must be made under fair, reasonable, objective, transparent and non-discriminatory conditions.

The CNMC's analysis of the initial distribution among the operators of the guaranteed minimum cost of the Partidazo channel carried out by Telefónica in July 2016, concludes that Telefónica must adjust the costs that were assigned to each operator due to the effect of several corrections. One of these adjustments resulted from the fact that Telefónica initially assumed a lower number of subscribers than actually corresponded to it. This factor gave rise to higher costs for the operators that purchased this channel. Although the excess amounts that Telefónica returned for this reason, in September 2018, were taken into account when setting the economic compensation, the season was already over, which made it impossible to address any potential effects on the competition at the time.

The adjustments as a whole having been made, the Resolution determines that Telefónica must compensate those operators that it overcharged for the guaranteed minimum cost of the football and motorsport channels. It also recognises Telefónica's right to demand payment from any operators that it undercharged.

In view of these conclusions, the CNMC urges the initiation of disciplinary proceedings, having found signs of non-compliance with the commitments.

*Unofficial document intended for the media. Not binding on the CNMC*

*The full text of the report approved by the Board is published on the website of the CNMC once any confidential elements are redacted, and is available at the link in the press release.*

*Reproduction authorised only if the source is cited.*