

PRESS RELEASE

The CNMC sanctions Endesa Energía XXI for distorting competition and violating good faith and professional diligence requirements.

- It used its regulated trader to direct its clients to the unregulated trader through a misleading campaign.
- This is considered a serious infraction, and the fine is set at 5.5 million euros.

Madrid, 24 June 2019 - The CNMC has sanctioned Endesa Energía XXI for using a privileged communication channel and for its deceptive activity with household consumers who were eligible to use a reference electricity trader (companies that can offer a set rate to small consumers) or to receive the tariff of last resort (TLR - also set by the government) for natural gas. These are consumers who, due to their special characteristics, enjoy a special protection mechanism, such as regulated final prices, and who use the invoice as the main form of communicating with the company. The fine amounts to 5.5 million euros. ([Case S/DC/0552/15 AGIC](#))

The action was initiated following a complaint from the Associació de Gremis d'Installadors de Catalunya. Gas Natural requested a conventional settlement with commitments ([Case S/0630/18 AGIC GNSUR](#)). In contrast, Endesa Energía XXI withdrew, which resulted in this sanctioning process.

The events occurred during the heating campaigns that spanned from October 2012 to March 2013 and from October 2013 to March 2014. In the invoices to its TLR electricity and natural gas clients, Endesa Energía XXI included messages from its free-market (unregulated) trader, Endesa Energía. The clients of the regulated trader went to the Service Point, encouraged by the personalised energy campaigns “*Al mal tiempo, Calor amigo*” and “*Este invierno, más Calor Amigo*”, even though the Service Point worked to recruit clients for the unregulated trader.

In other words, it took advantage of the confusion and limited knowledge of the average household consumer about the differences and consequences between regulated and unregulated traders in order to redirect them to service points associated with its unregulated trader. It did so by using confusing advertising messages through a privileged communication channel, i.e. the invoice, with the aim of redirecting them to Endesa Service Points, with which Endesa Energía XXI has not signed any contract, since they only provide service to clients of Endesa Energía.

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The Chamber of Competition notes that the prohibition in Article 3 of Law 15/2007 of 3 July, on Free Competition (LDC), demands the concurrence of two requirements: the existence of an act of unfair competition and an effect on the public interest by distorting competition in the market.

As concerns the act of unfair competition, there was a violation of Article 4 of Law 3/1991 of 10 January, on Unfair Competition, for engaging in a practice - the sending of confusing communications through a privileged communication channel - that is objectively contrary to the requirements of good faith and professional diligence. This seriously diminished the ability of the average regulated-market consumer to make a decision based on a full knowledge of the facts. Endesa XXI was aware of how vulnerable these consumers were and that its conduct was capable of significantly distorting their behaviour.

Regarding the requirement to affect the public interest by distorting competition, this involved an essential service, namely the supply of gas and electricity, in a company with a relevant market position and through mass marketing communications.

As a result, the CNMC deems that a serious infraction has been committed and imposes a fine of 5.5 million euros on Endesa Energía XXI.

The CNMC notes that this Resolution cannot be appealed through administrative channels, though the company may bring an application before the National Court within two months after the day the Resolution is filed.

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