

PRESS RELEASE

The CNMC agrees to extend for three years the remedies agreed as part of the merger authorisation between Telefónica and DTS in 2015

- All the remedies are maintained for the maximum period of three years, save for the one involving the purchase of exclusive broadcast rights in Spain for original non-sports audiovisual content released by third parties for broadcast on SVOD (Subscription Video On Demand), which is eliminated.
- The remedy regarding the continuation of the conditions applied in 2015 to the owners of third-party television channels is adapted.
- Those remedies related to the pay-television market in Spain expressly subject to a shorter term, which has already ended, lapse.

Madrid, 17 July 2020. The CNMC has agreed to extend for three years the remedies agreed to authorise the merger of Telefónica and DTS in 2015. All the remedies are maintained for the maximum period of three years, save for the one involving the purchase of exclusive broadcast rights in Spain for original non-sports audiovisual content released by third parties for broadcast on SVOD (Subscription Video On Demand), which is eliminated. In addition, the remedy regarding the continuation of the conditions applied in 2015 to the owners of third-party television channels is adapted. Those remedies related to the pay-television market in Spain expressly subject to a term that has already expired, lapse.

On 22 April 2015, the full CNMC board approved, in the second phase, with remedies subject to monitoring, the merger operation consisting of the exclusive takeover of DTS by Telefónica ([C/0612/14](#)). Said Resolution envisaged the remedies would last five years, after which the CNMC would analyse whether the existence of relevant modifications in the markets affected by the operation justified the continuation, adaptation or elimination of the remedies for an additional period of up to three years.

The remedies proposed by Telefónica, and to which the CNMC subordinated the merger authorisation, fall into three categories: remedies related to the pay-television market in Spain; remedies related to the wholesale markets for commercialising audiovisual content and television channels in Spain; and remedies related to access to Telefónica's internet network. The goal of these remedies is to resolve the obstacles and mitigate the risks of the merger operation in order to maintain effective competition in the affected markets.

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The CNMC Council concluded that, in general, the risks to effective competition identified in the initial framework for the merger persist, and that the competitive situation in the affected markets justifies continuing the remedies adopted for an additional three years. In its decision, it took into account that Telefónica continues to have market power in pay TV, as well as the notable growth in the proportion of customers whose pay-TV services are bundled with other electronic communications services.

Premium third-party non-sports content

However, in relation to premium third-party non-sports content, even though Telefónica continues to be a major player, with regard to broadcast rights in the video-on-demand (SVOD) market, it was deemed that this purchasing power has eroded in comparison to the situation analysed in 2015. This circumstance justifies the elimination of the remedy that limited the contracts that Telefónica could enter into for this type of content, in terms of exclusivity, validity period and exploitation period.

The vertical integration of several of the majors, the recent trend in the services provided by operators of OTT platforms (which offer video content via the internet) in other European Union countries, and the rapid growth that said platforms have experienced in Spain in recent years, together with the global nature of many of these companies, which allows them to enter into multi-jurisdictional agreements, justify the conclusion that it was not sufficiently demonstrated that Telefónica can, in coming years, exercise purchasing power that has an exclusionary effect in relation to rights for non-sports content on demand.

Wholesale marketing of TV channels

With regard to the wholesale market for TV channels, the Board believes that Telefónica continues to have significant market power, which means that the risks to competition identified in 2015 persist, in particular the risk of the market being closed off to channel operators.

Consequently, the continuation of the remedy means that Telefónica will not be able to terminate early the contracts currently in force whose period of validity ends during the extension period. However, in view of the loss of audience experienced by the third-party online channels offered on the Telefónica platform from 2015 to 2019, a loss not reflected in the cost of the channels for the company, the CNMC Board has accepted the proposal by Telefónica¹ for reasons of proportionality.

Thus, it has adapted the remedy regarding the continuation of the conditions applied in 2015 to the owners of third-party television channels for those cases in which the validity of the related contracts ends during the extension of the remedies. This is

¹ The final paragraph of remedy 2.11 is replaced by the following: “*The resulting entity undertakes not to terminate in advance and to negotiate in good faith, under reasonable and non-discriminatory conditions, the contracts for the distribution of third-party television channels whose period of validity ends during the extension period of the remedies*”.

done in order to accommodate potential variations regarding the content of said channels or their appeal to Telefónica's pay-television customers, through negotiation in good faith, under reasonable and non-discriminatory conditions. Said adaptation is subject to the additional guarantee that any affected third party may request arbitration by the CNMC, provided as an additional remedy to settle any disputes that may arise, among others, in relation to this remedy regarding the distribution of third-party television channels.

Other remedies whose term has expired

Finally, the Board declared the validity lapsed of the remedies involving contractual relationships in force at the time of the operation for which a specific term of compliance was envisaged (for example, six months from the expiration of said contracts or six months since the authorisation of the merger) that has already expired, related to the pay-television market in Spain.

Specifically, those intended to ensure the continuation and full compliance of the contracts in force in 2015 between DTS and other electronic communications operators to distribute the Yomvi video-on-demand service (via OTT) or the satellite products (as well as the associated periodic reporting obligations) and, partially, the one related to waiving the requirement and application of minimum contract length clauses to customers of pay-television services under certain circumstances.

The CNMC will continue its monitoring pursuant to CNMC Board Resolution of 22 April 2015 resulting from case C/0612/14 TELEFONICA/DTS.

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

This Proceeding contains the individual votes of two members of the Board.