

PRESS RELEASE

The CNMC urges Telefónica to modify its agreement with Dazn to be compatible with the commitments acquired in its take-over of DTS.

- In 2015, the Commission authorised the Telefónica/DTS take-over subject to a series of commitments related to pay television.
- The recent agreement between Telefónica and Dazn regarding the Formula 1 exclusive rights for the 2021, 2022 and 2023 seasons could breach some of those commitments.

Madrid, 10 August 2021.- The CNMC has published a resolution urging Telefónica to modify certain aspects of its agreement with Dazn to adapt it to the commitments acquired after the Telefónica/DTS take-over transaction in April 2015 (VC / 0612/14).

The CNMC has analysed the compatibility of the agreement dated January 7th, 2021 between Telefónica and Dazn with the commitments acquired after the Telefónica / DTS take-over transaction in April 2015 ([press release](#)).

This resolution is part of the surveillance work carried out by the CNMC to verify that Telefónica complies with the commitments offered for the approval of the DTS (the former Sogecable) takeover by Telefónica by acquiring the 56% of DTS that was owned by the PRISA group.

Surveillance is one of the mechanisms to ensure that the obligations (conditions, commitments, and sanctions) adopted are met and competition in the markets is preserved.

The compromises (Telefónica/DTS) affected the pay television market and included the wholesale marketing of an annual content offer consisting of "*premium channels*", the replicability of the products with these channels and the non-discriminatory access to the Internet for its clients to pay television content from OTT (*over the top*) operators.

Annual *premium* channel offer

Consequently, Telefónica must have a wholesale offer so that its competitors can access payment channels with *premium* content (first-released films, national and international sports competitions, including Formula 1), and market them through their own pay-tv platforms. In order to calculate competitor payments to access the wholesale football and motor channel products, Telefónica considers the so-called minimum guaranteed cost (MGC).

Motor channels, like football channels, are subject to the proportional distribution of

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fixed costs for the payment of exclusive broadcasting rights between Telefónica and the operators that hire them, and of production costs and other concepts (this is the MGC).

This proportional distribution is carried out based on predetermined criteria in the commitments that include the subscriber fees to each operator's pay television, as well as the potential for contracting based on their networks.

Likewise, the commitments limit the acquisition by Telefónica of broadcasting rights in Spain exclusively (also *de facto*) of channels edited by third parties.

Agreement between Telefónica and Dazn

Regarding this resolution, the CNMC has analysed whether Telefónica complies with specific aspects of the commitments: the wholesale offer of *premium* channels owned by Telefónica, the guaranteed minimum cost, and the acquisition of broadcast rights for channels edited by third parties.

The agreement implies a sublicense by Telefónica to Dazn of the exclusive broadcasting rights (previously acquired by Telefónica under exclusivity) of the Formula 1 competitions for the 2021, 2022 and 2023 seasons. Furthermore, Telefónica and Dazn have agreed on the conditions under which Dazn will allow Telefónica non-exclusive access to Dazn content, including the Formula 1 that Telefónica will offer on its own OTT platform and establishes limitations on the acquisition of these rights by third parties.

The contract also establishes how customers who contract Telefónica packages, that access Dazn content (counted as Dazn customers) will be calculated.

Changes to the contract

The CNMC considers that certain aspects of the contract may not be compatible with the take-over commitments C/612/14. In particular, this could mean a decrease in the wholesale offer that Telefónica makes available to other operators and a restriction to the agreements that Dazn could reach with other operators to distribute its contents.

Consequently, the CNMC has declared that Telefónica must amend the contract in order to fulfil the commitments:

- First of all, Telefónica must modify its contract so that Formula 1 content continues to be included in its wholesale services and it must ensure that Dazn accesses such content in a non-discriminatory manner.
- In second place, Dazn's pay TV customer count must be modified to comply with the commitments regarding the guaranteed minimum cost.

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- Finally, the CNMC considers that the clause that limits the possibility of Dazn reaching agreements with third-party operators to freely distribute its contents should be deleted.

(VC / 0612/14)

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