

The CNMC fines Telefónica 5 million euros for failing to comply with part of the reporting obligations it undertook when it acquired DTS

- In 2015, Telefónica voluntarily submitted a number of commitments in order to acquire DTS and preserve competition in the market.
- Between May 2015 and at least June 2020, Telefónica failed to provide timely, correct, and complete information as required.
- This information is essential for the CNMC to verify compliance with the replicability requirement of Telefónica's commercial offers.

Madrid, 16 September 2022.- The CNMC has fined Telefónica 5 million euros for failing to comply with several of the obligations assumed in the commitments that the operator voluntarily submitted and accepted, which led the CNMC to authorise the acquisition of DTS by its Ruling of 22 April 2015 ([Press release](#)). TELEFÓNICA/DTS ([VC/0612/14](#)).

Subsequently, in July 2020, the CNMC extended the commitments acquired by Telefónica for another 3 years, with the aim of continuing to preserve competition in the markets affected by the aforementioned acquisition (among others, the pay-TV and electronic communications markets).

Among the obligations breached are those related to the information that Telefónica is required to provide so that the CNMC can analyse the effective replicability of retail commercial offers which include its own premium TV channels in its wholesale pay-TV offer.

In the commitments, Telefónica undertook to make available to operators an offer of premium TV channels at prices that would allow its competitors to replicate Telefónica's offers and be competitive. To ensure the effectiveness of this obligation and that these offers do not lead to a margin squeeze, Telefónica also undertook to provide the CNMC with regular information on the offers it launches in the market.

Lack of information

The initiation of disciplinary proceedings occurred because the Council of the CNMC, in its Ruling of 28 July 2021, declared the existence of indications of non-compliance with Telefónica's obligation to report information, which in this case is essential to verify compliance with commitment 2.9.j). This commitment ensures that the wholesale offer by which Telefónica makes premium TV channels available to third parties has conditions that allow effective replicability by third parties in their retail offers that include such channels.

However, the CNMC has verified that, between May 2015 and at least June 2020, Telefónica failed to provide timely, correct, and complete information.

Telefónica, from the very first report it was required to submit (one month after the merger) and until 2020, has failed to comply with its obligation by providing the information required by the commitments in an incomplete and untimely manner, and in a format that prevented the CNMC from verifying it.

As a result of this conduct, Telefónica has hindered the monitoring of the commitments and the early detection of possible breaches relating to the replicability of the commercial offers by third-party operators.

Failure to comply with the commitments of a concentration pursuant to the Spanish Competition Act (LDC as per its acronym in Spanish) constitutes a very serious infringement under Article 62.4.c of the LDC. Consequently, the CNMC has imposed a fine of 5 million euros on Telefónica.

The CNMC would like to point out that an administrative appeal may be lodged directly with the National High Court against this decision within two months from the day following its notification.

This decision was adopted with the dissenting vote of two council members.

[SNC/DC/093/22](#)