

The CNMC fines Telefónica 6 million euros for breaching the commitments made in its merger with DTS.

- In 2015, Telefónica voluntarily submitted a series of commitments that would allow it to acquire DTS and preserve market competition, including **not imposing minimum-term conditions on its Movistar Fusión offerings.**
- The National High Court recently validated the CNMC's decision to extend the validity of the commitments submitted by Telefónica until April 2023.
- The commercial bundle of Movistar Fusión retail services involving the lease of a smartphone (in force from April 11 until August 1, 2021), violates the commitments to which the merger with DTS was subject.

Madrid, March 10, 2023.- The National Markets and Competition Commission (CNMC) has sanctioned Telefónica to the tune of 6 million euros for breaching the commitments made after acquiring DTS in 2015. Specifically, one of the commercial bundles, Movistar Fusión, included the lease of a smartphone with a minimum-term obligation. ([SNC/DC/153/22](#)).

These commitments, initially valid until April 2020, were extended by the CNMC in July 2020 for an additional three-year period. Recently, the National High Court, through a ruling dated February 8, 2023, validated the CNMC's decision to extend these commitments.

The merger between Telefónica and DTS was authorized subject to compliance with the commitments proposed by Telefónica and approved by the CNMC on April 22, 2015 ([C/0612/14](#)).

Commitment 1.1 states that Telefónica may not apply conditions or practices to its pay-television customers that might impede their mobility. Among the possible practices that could contravene this commitment is the inclusion of minimum-term obligations (Section 1.1.2).

The CNMC considers that the conditions of the commercial bundle Movistar Fusión with smartphone lease (in force from April 11, 2021, until August 1, 2021),

violates this commitment 1.1 as it is considered a minimum-term policy indirectly associated with pay television.

All customers who signed up for Movistar Fusión products since its launch on April 11, 2021, both new customers and Telefónica customers who migrated from other products, were subject to a minimum-term and penalty for early termination during the 36-month period imposed by the contract.

As a result, the commercial bundle of Fusión with a *smartphone*, at least until August 1, 2021, restricted the mobility of Telefónica's pay-television customers who took out this service through Fusión, and restricted their ability to contract similar services with Telefónica's competitors.

Failure to comply with the commitments established in a merger transaction is a very serious infringement under Article 62.4.c of the Law on the Defense of Competition (LDC). Consequently, the CNMC has imposed a fine of 6 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.