

The CNMC fines Telefónica 5 million euros for again failing to comply with the commitments made in its merger with DTS.

- In 2015, Telefónica voluntarily offered a number of commitments in order to acquire DTS and preserve competition in the market.
- The terms of the agreement between Telefónica and DAZN to acquire the exclusive rights to broadcast Formula 1 violate certain commitments.
- Among others, Telefónica's conduct has excluded Formula 1 content from its 2021 wholesale channel offer and has imposed clauses that have led to de facto exclusivity.

Madrid, 31 July 2023.- The National Markets and Competition Commission (CNMC) has fined Telefónica 5 million euros for a new breach of several clauses of the commitments made following the acquisition of DTS in 2015 ([SNC/DC/010/23](#)). This is the second fine imposed on the company this year ([press release](#)) for failing to comply with the commitments of the aforementioned merger ([SNC/DC/153/22](#)).

Telefónica's acquisition of DTS was authorised subject to compliance with the commitments offered by Telefónica and approved by the CNMC on 22 April 2015 ([C/0612/14](#)).

The commitments were initially valid until April 2020, but the CNMC extended them in July 2020 for a period of three years ([VC/0612/14](#)). The National High Court confirmed the extension in its [judgment of 8 February 2023](#).

Exclusive rights

The agreement between DAZN and Telefónica whereby DAZN acquired the exclusive rights to broadcast Formula 1 for the seasons 2021, 2022 and 2023, which also gave Telefónica access to all of DAZN's content, violates the following points of the commitments:

- Commitment 2.9, which obliges Telefónica to make available to other pay-TV operators in Spain a wholesale offer of its own *premium* channels, whereby a *premium* channel is considered to include, among other content, a live Formula 1 sporting event.

- Commitment 2.10, which forbids Telefónica from acquiring exclusive broadcasting rights to television channels produced by third parties.
- Annex 1.1(a) of the commitments, which includes a system for pricing certain channels in Telefónica's wholesale *premium* channel offer, notably Football, Formula 1 and Moto GP. The price for operators wishing to subscribe to these channels will be subject to a minimum guaranteed cost system which aims to share the risk assumed by Telefónica when acquiring the exclusive broadcasting rights in Spain for the aforementioned content.

Breaches and sanction

Telefónica has breached Commitment 2.9 by excluding Formula 1 *premium* content from its wholesale offer and selling it exclusively to DAZN. It has also breached Commitment 2.9 and Annex 1 by including in the agreement a provision whereby any Telefónica subscriber who receives DAZN content will also be considered as a DAZN subscriber for the purposes of calculating the minimum guaranteed cost (in the framework of Telefónica's wholesale channel offer in Spain). Finally, the company has breached Commitment 2.10 by including in the agreement clauses which allow, in one way or another, for de facto exclusivity.

Failure to comply with the commitments established in a merger transaction is a very serious infringement under Article 62.4.c of the Spanish Competition Act. 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.

Related content:

- [SNC/DC/010/23](#): Telefónica's agreement with DAZN
- [Press release](#) (10/3/2023): The CNMC fines Telefónica 6 million euros for breaching the commitments made in its merger with DTS.
- [SNC/DC/153/22](#): Mobile terminals merger
- [Press release](#) (17/07/2020): The CNMC agrees to extend for three years the commitments attached to the authorisation of the merger between Telefónica and DTS in 2015.

- [Press release](#) (23/04/2015): The CNMC approves the Telefónica and DTS merger with commitments subject to monitoring
- [C/0612/14](#): Telefónica/DTS
- [Additional press releases](#) Telefónica/DTS