

The National Markets and Competition Commission (NMCC) approves the acquisition of DISTRIBUIDORA DE TELEVISIÓN DIGITAL S.A. (DTS) by TELEFÓNICA DE CONTENIDOS S.A.U. (Telefónica) subject to remedies on second phase (Decision of 23 April 2015, file C/0612/14).

The approved transaction consists of the acquisition by Telefónica (incumbent telecommunications operator also active in the pay TV market) of the exclusive control of DTS, through the purchase of the 56 % share capital in the hands of Prisa, which adds to the 44% share capital already owned by Telefónica.

The NMCC has approved the transaction of reference after an in-depth (second phase) investigation subject to commitments offered by Telefónica. Telefónica has proposed a five-year duration commitment package (renewable for three additional years) from the moment the NMCC Decision is deemed final (*i.e.*, 30 April 2015).¹ During this period, the resulting entity may request an amendment to the commitments offered if a significant change in the structure or regulation of the markets in question occurs.

The concentration was notified to the NMCC on 17 October 2014, following a streamlined referral from the European Commission under the ECMR. On 25 February 2015 Telefónica submitted its first commitment proposal in order to solve the competition concerns resulting from the transaction. Various modified commitment proposals have been necessary before the final commitment package could take form.

The commitments submitted by Telefónica may be summarized as follows:

(a) Commitments regarding the pay-TV market in Spain:

Telefónica commits not to hinder the mobility of its current and future pay TV customers with the establishment of any limitations to switching pay TV provider. In particular, Telefónica will process the cancelation requests of its customers in no longer than 15 days for clients with an unbundled offer; Telefónica will waive the application of permanence clauses under certain circumstances and will not attempt the recovery of certain types of customers, for the two months following the cancelation request.

Telefónica also commits to honour existing DTS contracts with other electronic communication operators, for the distribution of the DTS television signal. Once the contract term has expired, Telefónica shall extend this service for a period of six months, giving up its rights to actively sell to customers who have hired this service through intermediary operators.

(b) Wholesale marketing of individual media content and TV channels in Spain:

Telefónica will make available to other pay-TV operators the supply of premium channels (those with exclusive release rights over content of Majors or First Division Football League, Football King's Cup, Champions League, Europa League, Football World Cup, Basketball World Cup, Formula 1, Moto GP and the Olympic Games live sports events).

¹ On 30 April 2015 the Ministry of Economy and Finance adopted a decision confirming the NMCC Council Decision.

Each pay-TV operator will have access to a maximum of 50% of channels comprising wholesale supply. Pricing at the wholesale level will ensure the replicability of Telefónica's retail supply, preventing the possibility of margin squeeze situations.

The exclusive exploitation of the contents acquired by Telefónica is limited to two years and to certain types of broadcasting windows, while other windows (such as VOD of movies and TV catalogue) are restricted from being acquired on an exclusivity basis. As a general rule, Telefónica may not acquire exclusive broadcasting rights that it will not exploit. In addition, the resulting entity will limit to three years the duration its contracts for the acquisition of content and shall waive the preferential acquisition rights of contents.

The prior commitments shall not apply to the resulting entity's own productions.

Additionally, Telefónica acquires a *must carry* obligation to broadcast through its pay-TV platform, under certain conditions, the channels edited by third party operators. The resulting entity will not be able to acquire exclusive broadcasting rights to third party channels.

(c) *Commitments regarding the access to Telefónica's internet network in Spain:*

Telefónica has the ability and incentives (closing or limiting access to its network) to substantially reduce competition coming from third pay-TV operators via Internet.

In this regard, the commitments package enables pay-TV providers to access Telefónica's broadband customer base in competitive conditions. Telefónica commits to provide third party access to its internet network in Spain, with capacity and sufficient guarantees of quality and in FRAND terms.

In addition, Telefónica commits not to carry out network and traffic management techniques in Spain which could result in third party/operator discrimination.

Telefonica's bilateral conflicts with third party operators in relation to the implementation of the commitments may be subject to arbitration before the NMCC in the event that the third operator so desires.

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