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01 The 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 telco and also second largest operator in the pay-TV market) of exclusive control of DTS (number one pay-TV operator), 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. 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). 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 ECFR. 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 service termination 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 solicit certain categories of customers for two months following the cancellation request.

Telefónica also commits to honor 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 solicit 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).

Each pay-TV operator will have access to a maximum of 50% of channels comprising wholesale supply. Pricing levels at the wholesale level should 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 of its contracts for the acquisition of content and shall waive its rights for preferential acquisition 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 (*e.g.*, by restricting 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.

Conflicts with third party operators related to the implementation of the commitments may be brought to arbitration before the NMCC.

02 The NMCC imposes fines upon several oil companies totalling €32 million for entering into anti-competitive agreements (Decision 20 February 2015, file S/0474/13).

On 24 February 2015, the NMCC sanctioned Repsol S.A., Disa Corporación Petrolifera S.A., Meroil S.A., Galp Energía España S.A., BP España S.A. and Compañía Española de Petróleos S.A.U. (**CEPSA**) for several infringements of Articles 1 of the Spanish Competition Act (**SCA**) and 101 TFEU. In particular, the NMCC found the existence of the following anticompetitive agreements:

- (i) An array of agreements between CEPSA and REPSOL, namely: price coordination agreement concerning service stations in Brea de Aragón and Illueca (province of Zaragoza) in July 2013; a non-aggression agreement during July and August 2011, by means of which each of the said companies agreed not to start negotiations with petrol stations selling each other's brand; and various exchanges of strategic information in 2011, 2012 and 2013 concerning petrol stations managed by one of the companies but exclusively supplied and operated under the brand of the other.

- (ii) A non-aggression agreement on prices between CEPSA and DISA between July and September 2011, and a price fixing agreement regarding the city of Ceuta in July 2013.
- (iii) Several exchanges of sensitive information between DISA and MEROIL in 2012 in relation to the prices to be applied in the petrol stations in the area of Sant Joan Despí (province of Barcelona) and, in 2013, in relation to the operating margins.
- (iv) An exchange of sensitive information between GALP and MEROIL relating to a supply and branding contract in May 2013.

03 The NMCC has imposed fines totalling €57.7 million on 18 companies and one trade association active in the markets of paper and corrugated cardboard manufacturing (Decision of 18 June 2015, file S/0463/13).

On 18 June 2015, the NMCC has fined 18 companies and one trade association for breaching Article 1 SCA and Article 101 TFUE. According to the NMCC Decision, the following took place:

- (i) Regarding the market of paper pulp and paper for the elaboration of corrugated cardboard, the NMCC has found the existence of information exchanges between different operators concerning paper prices. According to the NMCC, the Trade Association of Corrugated Cardboard Manufacturers (**AFCO**) played a key role in the functioning of those agreements.
- (ii) With regard to the market for manufacturing and processing of corrugated cardboard for packaging products, the NMCC has detected information exchanges and agreements to increase prices and allocate customers. The conduct included recommendations published in the media.

The NMCC has qualified the anticompetitive practices as a single and continuous infringement from 2002 until 2013.

04 The NMCC has imposed fines totalling €171 million on 21 automobile manufacturing and distributing companies in Spain, as well as two consulting companies, for anti-competitive practices (Decision of 23 July 2015, file S/0482/13).

The NMCC considers that a single and continuous infringement of Article 1 of the SCA and Article 101 of the TFEU has taken place, consisting of a systematic exchange of confidential and commercially sensitive information (current and future) highly disaggregated, covering almost all of the activities carried out by the fined companies (*i.e.*, sale of new and used vehicles, provision of garage, repair and maintenance services and sales of official replacement parts).

According to the NMCC, the combined market share of the brands participating in the analyzed conducts reaches around 91% of the relevant automobile distribution sector in Spain.

Furthermore, according to the Decision, the companies carried out secret exchanges of information using, as mechanisms to allow the mentioned exchanges of information, two consulting companies: Urban Science and Snap-On. These exchanges of information were structured in three different business areas and were carried out through a complex agreement developed from February 2006 to August 2013.

The NMCC has considered that these exchanges of sensitive information had negative effects on competition in the market, causing an artificially reduction of uncertainty between the companies in relation to the sales policies of their competitors.

As a result, the NMCC has fined 23 operators and granted various companies of the VW group immunity from fines as successful leniency applicant.

05 The NMCC has imposed fines totalling €15.5 million on Telefónica and DTS for the unlawful marketing of football broadcasting rights (Decision of 24 July 2015, file S/0436/12).

On 24 July 2015, the NMCC fined Telefónica España S.A.U (**Telefónica**) and DTS Distribuidora Televisión Digital S.A (**DTS**) for illegally agreeing on the acquisition, resale and wholesale exploitation of football broadcasting rights for the seasons 2012/13 and 2014/15.

In particular, the NMCC found the existence of two agreements for the marketing of Canal + *Liga de Campeones* (Champions League) and Canal + *Liga* (Spanish Football League):

- (i) Regarding Canal + *Liga de Campeones*, Telefónica knew beforehand the strategy of DTS aimed at marketing the Champions League rights to an exclusive telecommunication operator, which put Telefonica at an advantage *vis-à-vis* the other operators. As a result, Telefónica had more time to evaluate and plan the acquisition of these costly and strategic assets. Additionally, DTS designed auction conditions that clearly favored Telefónica.
- (ii) With regard to Canal + *Liga*, DTS designed its wholesale supply tailored for Telefónica and, as with the Champions League, Telefónica knew in advanced the strategy and prices of DTS. All of the above placed Telefónica in a position of competitive advantage over the rest of operators.

Therefore, DTS favored Telefónica over other pay-TV operators in the acquisition football broadcasting rights; which, in turn, would have indirectly strengthened Telefónica's position in the telecommunication sector in a context of multiple play offerings where pay-TV is an important part of the bundle.

The amount of the fine has taken account of the size of the relevant markets and effects, the length and extent of the conduct and the benefits obtained. Telefónica has been fined €20 million and DTS €5.5 million.

06 New Trade Regulation Applicable to the Marketing of Football Broadcasting Rights.

On 1 May 2015, the Spanish Government has published Royal Decree-Law 05/2015, of urgent measures in relation to the distribution of the exploitation rights of audiovisual contents of professional football competitions (**RDLF**). The approval and entry into force of the RDLF puts an end to long and complex negotiations between all stakeholders including the Spanish Football League (comprising all professional football clubs), the Spanish Football Federation and the Government.

Before the entry into force of the RDLF, each football club used to negotiate and sell its broadcasting rights individually, since the owner of the broadcasting rights of each match is the home playing team. This led to great differences between the incomes of the most popular teams (mainly Real Madrid and Barcelona) and the rest of the teams (because most matches played by the most popular clubs were priced highly, whereas only the few games played by the least popular clubs against the most popular clubs were priced highly). Prior to the RDLF, the visiting team had to provide its consent to the broadcast of each particular match, which could entail considerable discussion and complexity when the licensee of the broadcasting rights of the home team and the licensee of the rights of the visiting team was not the same (in the last few years, two entities were particularly active in acquiring these rights, Mediapro and Sogecable). The marketing system hitherto in place has been in force during years of fierce competition between Mediapro and Sogecable, two entities that have rivalled for ownership of the football broadcasting rights (and some of which business practices have been subject to antitrust scrutiny overtime).

The system reached a critical point with the antitrust review by the Spanish Competition Authority (**SCA**) of the system of long-term exclusive licensing arrangements in force between football clubs and buying entities, particularly Mediapro and Sogecable. A new regulatory framework for the media industry, the General Audiovisual Communication Act 7/2010 (**GACA**), was approved on 31 March 2010, establishing a maximum duration of four years for exclusive licensing of football broadcasting rights, without prejudice to the application of competition law. A few days after the entry into force of the GACA, the SCA specified that the maximum duration of exclusive licensing agreements of football broadcasting rights was limited to three years,

in what the SCA argued (and the courts upheld) was an individual decision not contradictory with the GACA and justified on the particular grounds of the economics of the football broadcasting rights market.

Amongst other things, the RDLF's goal is to redistribute income from the sale of broadcasting rights by establishing and regulating the collective sale of broadcasting rights of professional football competitions, namely the Primera División (first division or Liga BBVA), the second division (Liga Adelante), Copa del Rey (King's Cup), and Supercopa de España (Spanish Super Cup).

Under the RDLF, the ownership of the television rights still belongs to the football clubs participating in professional football competitions. Football clubs, however, will in the future assign their broadcasting rights to a pool managed by an organizing entity (*i.e.*, the Spanish Football League regarding the first and second division competitions, or the Spanish Football Federation regarding the Copa del Rey and Supercopa de España). The organizing entity will implement (*i*) the joint selling (through licensing agreements not lasting for longer than three years, following the SCA practice, see above) and (*ii*) the distribution, pursuant to the regulated criteria contained in the RDLF, of the income generated by the joint selling of rights. According to the income distribution criteria of the RDLF, the difference between the club that receives least and the club that receives most income shall not be greater than 4.5 times.

07 Public consultation: Amendment to the NMCC Notice on the merger cases resulting from the application of the short form filing.

The NMCC has launched a public consultation on the amendment of the "Notice on the merger cases resulting from the application of short form filing" (**Short form Notice**).

The current structure of the NMCC, with the integration of the former regulatory agencies (Telecommunications, Energy, Transport, Postal Sector and Competition), should enable speedier reviews in merger control proceedings in regulated industries, where the law requires a report of the sector regulator.

Therefore, the NMCC considers appropriate to amend the Short form Notice indicating that in cases where the criteria of Article 56 of the SCA is met (*i.e.*, cases qualifying for a short form merger filing), regarding a concentration in a sector regulated by the NMCC (*e.g.*, energy, telecommunications), a long form filing will not be required.

The amendment of the Short form Notice is expected to be implemented on the following days/weeks since nobody has submitted any objection / observation.

08 The High Court clarifies rules to calculate deadlines for punishing proceedings initiated by the NMCC (Judgments of 9 and 20 March 2015).

One of the features of the Spanish antitrust procedure is that the NMCC has in principle a limited time frame (18 months) from formal initiation of proceedings, to complete proceedings and issue a final administrative decision on the matter. In March 2015, the High Court held that the method followed by the NMCC to calculate the duration of the suspension of the maximum deadline to issue a decision was illegal. As a result, the High Court declared that various punishing proceedings were time-barred, thus annulling the antitrust Decisions in those proceedings.

According to Article 12 of the SCA Implementing Regulation (**SCR**), if the time frame to issue a decision in punishing proceedings is suspended, the new deadline should be determined by adding the number of calendar days during which the proceedings were suspended. The NMCC did the following though: when the last day of the new deadline was a non-working day, the NMCC was pushing the deadline to the next working day. Therefore, for subsequent suspensions, the last day of the deadline from previous suspensions was used as a reference to calculate the new deadline.

The High Court held that this calculation method is incorrect because the SCR refers to calendar days (not working days) for the purpose of recalculating the new deadline following a suspension of proceedings. According to the High Court, the deadline may only be pushed to the next working day when (i) the last day of the suspension period is a public holiday and (ii) it is a final suspension.

Moreover, the High Court also states that the NMCC must notify the suspension of proceedings and the new deadline to interested parties each time a suspension is declared. The failure to notify the interested parties the suspension will render such suspension ineffective with regard to the parties that have not been notified.

09 Dawn raids: the Supreme Court (SC) has annulled two fines imposed by the National Competition Commission (NCC) to a Spanish shipping company (Judgments of 1 June 2015).

The SC has annulled two NMCC decisions fining Transmediterránea (a Spanish shipping company that operates passenger and freight ferries). In particular, in two separate decisions (of November 2011 and February 2012) the NCC fined Transmediterránea €48.2 million for having participated in two cartels in Ceuta and the Balearic Islands.

The SC has considered in both cases that the NCC breached the fundamental right to inviolability of the home (Article 18 of the Spanish Constitution) during the dawn raids that were carried out as part of the proceedings. According to the TS, the decisions ordering the inspections were too generic and lacked the necessary minimum information on the purpose and scope of the investigation.

Pursuant to the above, the SC judges that the evidence obtained as a result of the mentioned inspections is invalid, since it was obtained as a result of the violation of a fundamental right. In the absence of such evidence, the SC has ruled that the standard of proof was not met in the fining decisions, since the declaration of the existence of the cartel was based on the documents apprehended by the Authority in the contested inspections.

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