

Antitrust: Commission fines Telefónica over €151 million for over five years of unfair prices in the Spanish broadband market

The European Commission has fined the Spanish incumbent telecoms operator Telefónica €151 875 000 for a very serious abuse of its dominant position in the Spanish broadband market. Telefónica imposed unfair prices in the form of a margin squeeze between the wholesale prices it charged to competitors and the retail prices it charged to its own customers. In so doing, Telefónica weakened its competitors, making their continued presence and growth difficult: competitors were forced to make losses if they wanted to match Telefónica's retail prices. With high wholesale costs and weakened retail competition on the broadband market, Spanish consumers pay 20% more than the EU-15 average for broadband access. The Spanish broadband penetration rate is 20% below EU-15 average, and its growth is nearly 30% below that of the EU-15. .

Competition Commissioner Neelie Kroes commented: "Spanish consumers are paying far more than the average for high-speed Internet access and many have chosen not to pay that price. The margin squeeze that Telefónica imposed on its competitors not only raised their costs, but also harmed customers significantly. When consumers and businesses are harmed in such a major market, the entire economy suffers. I will not allow dominant companies to set prices that undermine telecoms liberalisation".

ADSL – the provision of high speed internet access using a fixed telephone line - is the main technology used in Spain to provide broadband internet access services, with 80% of broadband connections at the end of 2006. As the only Spanish telecommunications operator that has a nation-wide fixed telephone network, Telefónica controls the entire ADSL value chain in Spain. It is uneconomical to duplicate Telefónica's local access network so alternative network operators wishing to provide retail broadband services have no option but to purchase wholesale broadband access products from Telefónica: namely local loop unbundling, regional wholesale access and national wholesale access. The Decision does not concern local loop unbundling, which is not a substitute to the other two wholesale products.

The Commission's decision establishes that from September 2001 to December 2006, the margin between Telefónica's retail prices and the prices for wholesale broadband access at both the national and regional levels was insufficient to cover the costs that an operator as efficient as Telefónica would have to incur to provide retail broadband access. This means that a competing provider of broadband that was just as efficient as Telefónica was faced with the choice of either exiting the market or incurring losses.

Telefónica was at all times free to end this margin squeeze by lowering its wholesale prices on its own initiative. Its national wholesale prices – which in 2006 accounted for around 70% of the prices covered by this decision - were not regulated and its regional wholesale prices – around 30% of the prices in 2006 - were only subject to maximum prices set *ex ante* by the Spanish regulator on the basis of forecasts provided by Telefónica in 2001.

Telefónica was in any event in a position very soon – if not immediately – to realise that those estimates were not matched by its actual data. Telefónica's business plan and cost accounts show that the company could not have been unaware that it was engaging in a margin squeeze.

Following the Commission's opening of formal proceedings in February 2006, the Spanish regulator analysed the broadband markets under the new regulatory framework in June 2006, which led it to significantly decrease Telefónica's regional and national wholesale prices in December 2006. This intervention put an end to the abuse identified in the Commission's decision.

In view of its gravity and duration, Telefónica's abuse warrants a severe sanction. The abuse had a very negative impact, in the form of obstacles to the entry of competitors in this important market. The associated harm for customers was considerable.

Today's decision should deter other incumbents from similar conduct, not only in the broadband internet access market, but also as concerns Telefónica's and other incumbents' positioning in the launch and development of new services, in particular triple play (telephony, internet and TV over broadband) offers.

The decision is an important precedent for the assessment of similar cases in other sectors, in particular network industries that have been recently liberalised or are in the process of being liberalised and in which incumbent operators may attempt to abuse their dominant position inherited from significant periods of exclusive rights and monopoly rents.

In 2003, the Commission fined Wanadoo, the internet arm of France Télécom for abuse of a dominant position in the form of predatory prices in the French retail broadband market (see [IP/03/1025](#)). Today, the French broadband markets are among the most competitive in Europe, with lower prices and increased penetration since the Commission's decision.

The Commission trusts that today's decision will contribute to the development of the Spanish broadband market and looks forward to continuing to work with the Spanish regulator to the further benefit of Spanish consumers.

For further information see [MEMO/07/274](#).