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**The company has fully complied with the Spanish authority's regulation**

## **TELEFÓNICA DISAGREES WITH EUROPEAN COMMISSION DECISION AND WILL IMMEDIATELY REQUEST ITS ANNULMENT BEFORE THE EUROPEAN COURTS**

- **The EU decision is wholly unjustified given the satisfactory evolution of the Spanish broadband market, publicly acknowledged by the national regulator.**

Telefónica announced today its firm intention to lodge an application for annulment of the European Commission ruling in connection with the proceedings initiated, at the request of a French state-owned company, against Telefónica de España for an alleged abuse of dominance in the Spanish market for broadband Internet access. It will file its request before the European Courts in the coming days.

Telefónica considers the Commission decision unjustified and disproportionate. Telefónica contests the decision's legal, economical and market analysis, and underlines that it has fully complied with the existing regulation imposed by the Spanish authority, the Comisión del Mercado de las Telecomunicaciones (CMT). The company is convinced it has rigorously met the CMT's strict parameters which, for the sake of competition and on an *ex ante* basis, regulate every initiative taken by Telefónica to offer consumers a range of innovative and varied products and services, both in terms of price and quality.

It is the first time that the Commission identifies an illegal margin squeeze for a non-essential service such as wholesale indirect access, which does not exist as a regulatory obligation in some of our neighbouring countries. Moreover, the Commission's line of argument is totally contradictory, since high retail prices by definition provide competitors with a margin.

Furthermore, as publicly acknowledged by the CMT, the Spanish broadband market has seen increased competition, which makes the Commission decision even more surprising. New operators have entered the market while Telefónica's share of the broadband market has decreased significantly and steadily in recent years. To fine Telefónica for a breach of the competition rules is not reasonable.

Spain has experienced an exponential growth in broadband connections between 2001 and 2005, in line with similar EU Member States. The European Commission itself recognised this in its latest implementation report, stating that broadband penetration in Spain is developing satisfactorily.

The Spanish broadband market is characterised by the presence of strong and well-capitalised competitors, including cable operators who do not depend on Telefónica's infrastructure to offer their services. This differentiates the Spanish market from many other EU countries, further calling into doubt the Commission's decision.



## **Legal uncertainty**

Telefónica finds itself squeezed between two regulators - the national regulator (CMT) and the European Commission - which are at odds with each other. As a result, the decision by the Commission creates enormous uncertainty about the role played by the regulatory bodies and the competition authorities in the telecommunications sector, throwing into question the supervisory functions of the Spanish authorities.

The legal uncertainty created by this decision will inevitably affect Telefónica's and other operators' ability to launch new products and services, with a direct impact on the entire European telecommunications sector to the detriment of European consumers.

Telefónica will nevertheless continue to offer broadband services in the highly competitive Spanish market, while at the same time maintaining its commitment to guaranteeing fair competition and generating consumer benefits as core values within Telefónica's corporate strategy.

The events date back to 2003, when Wanadoo (precisely a French state-owned company) lodged a complaint before the European Commission against Telefónica alleging an abuse of dominant position in the Spanish broadband market through a so-called "margin squeeze." In February 2006, the European Commission initiated formal proceedings against Telefónica de España on the grounds of anti-competitive behaviour, without having considered the possibility of imposing precautionary measures to remedy the situation. These proceedings were initiated despite recurring and intense supervision by the Spanish telecommunications regulator CMT, which has monitored and regulated the company's pricing policy for broadband services without ever detecting a margin squeeze. For this reason, Telefónica has legitimate reasons to believe it has strictly adhered to the regulations governing fair competition and has acted in good faith.

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