[ES] National Commission for Market Competition opens an investigation into the Commercial Radio Broadcasters Association

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In Spain, the Sociedad de Artistas Intérpretes o Ejecutantes de España (AIE), and the Asociación de Gestión de Derechos Intelectuales (AGEDI) are the collective management societies or performing rights societies respectively representing musical performing artists and phonogram producers. These collective management societies are entitled to administer the right to receive an equitable remuneration from any third party that publicly performs or communicates sound recordings to the public, such as bars, clubs and radios, cinemas and television broadcasters (when recordings are synchronised with films).

AGEDI and AIE normally formalise agreements with the industry associations for a certain term of duration. In 2009, the term of the agreement with the Association of Commercial Radio Stations (AERC), which includes important radio stations such as Prisa, Cope and Atresmedia Radio, expired and since then both parties have been negotiating a new agreement without success.

During the course of such negotiations, the radio broadcasters association considered that the fee AGEDI-AIE intended to collect was excessive, abusive, and inequitable and filed a claim before the Spanish competition authority, the Comisión Nacional del Mercado de la Competencia (CNMV - see IRIS 2014-2:1/16). The CNMV opened investigation proceedings on the basis of a possible abuse of their dominant position in the market of commercial and public communication of phonograms. Given that AGEDI and AIE are the only collective management societies managing those public performance rights, the CNMV considered that AGEDI-AIE could be engaging in abusive practices prohibited by Article 2 of the Spanish Competition Act (Ley 15/2007, de 3 de julio, de Defensa de la Competencia).

Duringthe proceedings, the CNMV opened a new investigation, this time against the AERC, following a complaint from AGEDI-AIE. It is based on the possible restrictive competition practices that can exist when making collective recommendations to the radio stations, which are members of the AERC. The practices include suggesting that radio stations avoid paying any fees to AGEDI-AIE on the grounds that these are disproportionate and abusive, as those performing rights societies have a dominant position in the market; with such a

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recommendation intended to have more force in the course of the negotiation of the collective agreement.

Taking into account the information gathered, the CNMV considers that there is prima facie evidence that the AERC has been committing practices, which are prohibited by article 1 of the Spanish Competition Act and also by article 101 of the Treaty of the Functioning of the EU. The opening of these proceedings does not prejudge the final outcome of the investigation. There is now a maximum period of 18 months for a resolution by the CNMC.

CNMC, Nota de Prensa, a 29 de septiembre 2014

http://www.cnmc.es/Portals/0/Notas%20de%20prensa/20140929_Radio_comercial.pdf

CNMC, Press Release, 29 September 2014

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