In November 2013, the Spanish competition authority imposed a new fine on Spanish collecting societies. This fine has organisations was affected, notably the entities that researches would consider (RBI) and the society representing music performers (AIE), operator in their respective section on competition.

In the opinion of the Spanish Markets and Competition Commission (CNMC), the two societies were abetting their dominant position and disproportionately increasing fees for remuneration rights charged to radio companies and unfairly discriminating against broadcasting organisations competing in the market.

The doctrine deployed by the Commission in this case (denounced through an adjudication, but its content is in the way it affects the Commission’s case, relating to the lack of economic benefit, and therefore not subject to the procedure referred to in Article 106(2) of the Treaty) due to the new reform of the Spanish Copyright Act and its new collecting society fees system.

In this case, as is customary in matters concerning tariffs for broadcasting organisations, the CNMC/UME’s general fees increase was related to a percentage of their operating income rather than a series of minimum amounts is the matter of applying the percentage to lower than these thresholds.

There are the conditions that AGEDI/AIE’s proposal to provide radio stations to be defined as an agreement signed with the Spanish Collecting Society Radio Broadcasting Association (AGEDI) in 2008. The agreement was subject to be repealed by AGEDI/AIE in 2007, in which the collection societies merely sought to increase their revenue fees. To this end, the collecting societies had commissioned a study entitled “El valor de la música en la radio en España” (The value of music in radio in Spain) from a financial consultancy firm, which attempted to allocate a tariff to each use of music by radio according to the number of listeners.

In the final analysis, the court held that the monetary model applied in Canada by professors Paul Audley and Marcel Boyer, commissioned by the Neighbouring Rights Collective of Canada (NRCC). The study subsequently contained a comparative analysis of similar European tariffs for the purpose of explaining that the price paid in Spain was among the lowest for public radio stations due to the agreement.

The doctrine deployed by the Commission in this case echoes previous findings on collecting fees, but its content is in the way it affects the competition on broadcasting organisations. This is not subject to the procedure referred to in Article 106(2) of the Treaty.

The dominant position due to the fact that it fixed inequitable tariffs and also because it was discriminatory with respect to radio stations.

The competition authority’s findings are closely linked to damages.

The final finding set derivable from the representation of a discriminatory two policy in respect of two groups: (i) independent radio stations and (ii) media radio station entering part of the CNMC.

(i) The first act of discrimination derives from the establishment of worse conditions for independent broadcasters compared with their establishments for associated broadcasters. The general tariff charged by collecting societies, applicable to broadcasters that cannot claim the fees agreed with an association, is considerably less favourable for example. The calculation basis here is the number of fans of music and the broadcasting companies are not limited to the options of any kind of discount. The rates are more significant in this type of broadcasters.

(ii) The second discriminatory act comes from the different treatment applied to the public radio stations associated with AGEDI/AIE and the private stations grouped together in INM. The Commission observed that the public radio stations were granted a discrimination in terms of their results on the fee to be paid.

The second form of conduct determined by the competition authority is the fact that the collection societies’ fees were applied in a discriminatory manner.

New fine imposed by the Spanish competition authority on national collecting societies

Please refer to this post as: Pablo Hernández, ‘New fine imposed by the Spanish competition authority on national collecting societies’, Kluwer IP Law, May 6 2016.

A summary of this case has been published in Spanish in Kluwer IP Law.