

Acknowledgement of receipt — Pre-closure notice regarding multiple complaints registered under reference No CHAP/2010/310 — Multiple letters on collective management in Spain

(2010/C 353/14)

The European Commission has received and continues to receive a series of letters based on a standard form concerning a possible infringement by Spain of Article 106 in conjunction with Article 102 of the Treaty on the Functioning of the European Union (‘TFEU’) regarding the collective management of intellectual property rights in Spain. The European Commission has registered and will continue to register these letters under No CHAP/2010/310.

Given the very large number of letters received on this subject, the Commission, with a view to informing all those concerned while making the most economical use of its administrative resources, is publishing the present notice in the *Official Journal of the European Union* in order to acknowledge receipt of the letters and inform the senders of the results of the examination of the letters by the Commission services. This notice is also published on the following Commission website:

http://ec.europa.eu/community_law/complaints/receipt/index_fr.htm

All letters received draw the European Commission’s attention to a Report by the Spanish Competition Authority (CNC) titled ‘Informe sobre la gestión colectiva de derechos de propiedad intelectual’ from December 2009 ⁽¹⁾. With reference to the report, the letters ask the Commission to open proceedings against Spain for violation of Article 106 in combination with Article 102 TFEU. No further information is provided in the letters.

The purpose of the CNC Report is to analyse the sector of collective management of copyright in Spain from a competition angle, and to make recommendations on ways to improve the legislative framework and to encourage more competition between collecting societies. The Report refers to instances of possible anti-competitive behaviour by collecting societies in Spain, which may be caught by Articles 101 and/or 102 TFEU (and Articles 1 and/or 2 of the Spanish Competition Law). Nonetheless, no details are given as regards the possible application of Article 106 TFEU, as this issue falls outside the scope of the Report.

The Commission’s services would like to inform the complainants that they do not intend to propose to the Commission to launch proceedings against Spain on the basis of the letters received. The CNC has made a number of recommendations to improve the legislative framework so that it is more supportive of competition between collecting societies. It is now for the competent authorities in Spain to examine these recommendations and draw the appropriate conclusions. Furthermore, the CNC itself is currently handling cases concerning alleged infringements by collecting societies of Article 101 and/or 102 TFEU (and/or the equivalent provisions of Spanish law). Therefore, and in the exercise of the discretion which the Commission enjoys when deciding to bring infringement proceedings against a Member State under Article 106 TFEU, it would not be an appropriate use of the Commission’s resources to pursue an investigation on the basis of the letters received.

This does not prejudice the complainants’ right to submit other complaints to the competent authorities if they believe that collecting societies have infringed Articles 101 and/or 102 TFEU. Similarly, the Commission is not prevented from acting against Spain at a later stage, should it receive information showing that an infringement of Article 106 TFEU may have been committed.

Complainants can, if they so wish, submit their comments on the proposed closure of the procedure or any other aspect of the case which they consider appropriate within a period of 30 days from the publication of this notice. Any comments received after this time will not be taken into account.

⁽¹⁾ Available at <http://www.cncompetencia.es/Inicio/Informes/Estudios/tabid/228/Default.aspx>