



Telecommunication Newsletter Switzerland

Federal Administrative Court quashes decision of the Competition Commission which imposed a fine upon Swisscom in the amount of CHF 333 million for abusive pricing of mobile termination fees

Decision

Back in 2002, the Competition Commission launched an investigation in relation to the mobile termination charges in Switzerland. By decision of February 5, 2007, the Competition Commission found Swisscom to have abused its dominant position in the Swiss mobile termination market in order to impose abusive mobile termination fees on other operators and, therefore, imposed a fine in the amount of CHF 333 million.

According to the Federal Administrative Court's press release of March 9, 2010, the court, upon appeal by Swisscom, confirmed Swisscom to have a dominant position. However, it concluded that Swisscom can not be found to have abused its market dominance to impose abusive prices as required by the Swiss Cartel Act. According to the Federal Administrative Court, the regulatory environment in Switzerland, prevented Swisscom from imposing abusive termination prices.

Comment

The decision has not yet been published in full and it is therefore premature to make a reasoned analysis of the decision. It would, however, appear that the Federal Administrative Court may have considered that the alternative providers would have been in a position to challenge the termination charges but had deliberately refrained from doing so. The motive behind the alternative providers not having challenged the termination charges is that they all benefit from higher termination charges which are passed on to their own customers and, therefore, increase the revenue and, to a certain extent, also the net profit. And why should one mobile provider challenge the termination charges of another? Swisscom's excessive termination charges also

legitimize the alternative mobile providers' high termination charges.

One thing that must be said, however, is that this decision is not in the interest of the ultimate end user and it once again shows, in no uncertain terms, the serious deficits of the Swiss *ex post* system.

March 10, 2010

David Känzig

For further information please contact:
David Känzig (d.kaenzig@thouvenin.com)