



Telecommunication Newsletter Switzerland

Communication Commission orders Swisscom to reduce charges for leased lines by 15 - 30%

Decision

By decision rendered on March 10, 2010, the Communication Commission ("ComCom") - upon request of an alternative provider - ordered Swisscom (Switzerland) AG ("Swisscom") to reduce the charges for leased lines by 15 - 30% and to publish an offer for leased lines corresponding to the legal requirements for all available capacities.

Dominant Position

An enterprise is deemed to have a dominant position according to the Swiss Act on Cartels and other Restraints on Competition ("CA") if such enterprise may act materially independent from the other enterprises in a specific market (Art. 4 para. 2 CA). In order to determine whether or not an enterprise has a dominant position, the market will need to be defined both in terms of the product and geographical expansion.

Swisscom contested to have a dominant position in the market of leased lines. Therefore, the ComCom requested the Competition Commission to assess whether or not Swisscom had a dominant position in said market.

Transmission Path and Technology

In its assessment, the Competition Commission excluded cable operator networks from the relevant market.

The ComCom did not deviate from this assessment, although it found cable networks, in principle, to be suitable for leased lines. However, due to their topology in the access network as a loop, as opposed to the radial structure of the traditional telecommunication networks, the ComCom found the cable operator networks not yet suitable for leased lines, because of the fluctuations in the available bandwidths. Moreover, since leased lines over coaxial cables amount to 1 - 2% of the leased-line market

only, such a small percentage can not be viewed to have a disciplining effect upon market behavior. The ComCom also followed the reasoning of the Competition Commission and excluded wireless transmission technology from the relevant market as well as access to cable ducts and local loop unbundling. Swisscom argued that the relevant market will also have to be segmented according to the bandwidths and that for bandwidths in excess of 2 Mbits/s there was effective competition. The Competition Commission as well as the ComCom rejected Swisscom's arguments.

Existing Competition in the Trunk Segment

The Competition Commission determined a so-called long distance network between 18 points of presence, where it found actual competition and, therefore, no obligation upon Swisscom to offer leased lines at cost-oriented prices.

Swisscom, in turn, defined 280 regional switches as well as the greater city areas of Bern, Basel, Zurich, Geneva, Lausanne and Lugano, arguing that in the greater city areas as well as between the 280 points of presence sufficient competition existed and that, therefore, it was not required to offer leased lines between those regional switches and in the greater city areas.

The ComCom refined the analysis of the Competition Commission and defined a trunk segment as a connection between so-called trunk areas, where there is an existing competition for leased lines. The ComCom defined the trunk area as an area where there are at least three providers present with their own point of presence. Only where at least three of the same providers are present with their own point of presence both in trunk area A and trunk area B, did the ComCom find sufficient competition. Based upon these criteria, the ComCom determined the actual trunk segments as a connection between two trunk areas, where a provider could choose between at



least three providers for a leased line for such a trunk segment.

In the termination segment, the ComCom found Swisscom to have a dominant position and, therefore, did not hear Swisscom's arguments, pursuant to which no dominant position was to be found in the greater city areas.

The ComCom, however, rejected the arguments of the alternative provider, pursuant to which Swisscom was to have a dominant position in the entire market of leased lines from customer location A to customer location B. The alternative provider argued in substance that only Swisscom was in a position to offer leased lines on a Swiss-wide basis from point A to point B over its own infrastructure, whereas if a segmentation of the market in a terminating market and a trunk segment was to occur, the alternative provider would need to resort to a patchwork solution in order to connect the same customer. Such a patchwork solution, however, not only leads to higher costs but prevents the alternative provider from being able to offer uniform service level agreements for all segments. Moreover, since competition for large customers who use leased lines is fierce, there is not much incentive for competing providers to offer leased lines for the trunk segment to compliment the entire network.

Potential Competition

In the proceeding, Swisscom also argued that the Competition Commission did not sufficiently assess the impact of potential future competition, which may come into existence in the greater city areas by virtue of the deployment of fiber to homes through local utility companies. The ComCom found no reason to deviate from the Competition Commission's assessment, which found that there was not sufficient evidence of potential future competition which could be expected to have a disciplinary effect upon Swisscom's market behavior.

Ruling

Consequently, the ComCom required Swisscom to offer leased lines on a Swiss-wide basis at cost-oriented prices, with exception of the trunk segments, and lowered the prices offered by Swisscom for leased lines by 15 - 30% for the years 2007 to 2009.

The decision is subject to appeal.

Comment

The decision rendered by the ComCom is the latest of a series of decisions rendered in connection with the unbundling of the local loop, which was introduced to the Swiss Telecommunication Act ("TCA") on April 1, 2007. In all its decisions, the ComCom has substantially reduced the prices charged by Swisscom for regulated services such as access to the last mile including co-location, fast bit-stream access, co-location and access to cable ducts.

It remains to be seen whether Swisscom will challenge the decision. Since the refunds to be paid by Swisscom to the alternative providers pursuant to the decision rendered are substantial, it is likely that Swisscom will appeal the decision.

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