



## Telecommunications Newsletter Switzerland

# ComCom Orders Swisscom to Lower their Fees for Porting Telephone Numbers

On August 19, 2004, Cablecom GmbH filed a request for interconnection against Swisscom Fixnet AG with the Federal Communication Commission ("ComCom") for determination of the prices charged by Swisscom Fixnet AG for porting telephone numbers. Cablecom GmbH requested to determine the charges at cost oriented prices, alternatively to apply benchmarking. During 2004 to 2006, Swisscom charged CHF 31 for number portability.

In its decision rendered on July 3, 2006, the ComCom determined the charges for number porting for 2004 at CHF 17.65, for 2005 at CHF 15.15 and for 2006 at 11.90 instead of CHF 31 charged by Swisscom Fixnet AG.

In its decision, the ComCom referred to Article 28 para. 4 of the Swiss Telecommunications Act ("TCA"), which obliges all carriers of telecommunication services to assure the number portability. Details to this article are set out in the Ordinance of the Communication Commission. In particular, Article 5 of said ordinance regulates the allocation of the costs for the number portability as follows:

"Art. 5

*The carriers who are required to assure number portability shall bear the costs for its realization.*

*They may request contributions from new carriers to cover the administrative costs directly associated with number porting. The interconnection rules shall apply accordingly. [...]"*

In the context of fact finding, the ComCom referred to the Competition Commission as it considered the question of dominance to be relevant for the decision making and requested an expert opinion. On June 13, 2005, the Competition Commission presented its expert opinion and determined with respect to the

disputed service (porting of single numbers) that Swisscom Fixnet AG had a dominant position.

Based on this opinion, the ComCom held that Swisscom Fixnet AG had a dominant position and that it did not have any reason to deviate from the Competition Commission's opinion. The ComCom, however, clarified that the obligation to grant number portability exists irrespective of the dominant position in the market (see Article 28 para. 4 TCA). The question of dominance only comes into play with respect to the price regulation, i.e. non-discrimination obligation and the method for the calculation of the porting costs. As a consequence thereof, the ComCom argued that Swisscom Fixnet AG had to demonstrate the relevant costs, applying the principle of cost orientation. The ComCom analysed the calculation of the costs submitted by Swisscom Fixnet AG and concluded that the costs for number porting would have to be substantially reduced.

The decision of the ComCom has not become final and is subject to appeal.

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