



## Telecommunications Newsletter Switzerland

# Finding of the Competition Commission that Mobile Operator Have a Monopoly on the Termination on Their Own Network Opens the Door for Interconnection Proceedings

According to information publicly available, it appears that the Competition Commission Secretariat in its investigation against the three mobile operators in Switzerland, e.g. Swisscom, Sunrise and Orange, found all Swiss mobile operators to have a monopoly on incoming calls on their own network. See also our newsletter of April 13, 2006.

The finding of the Competition Commission appears to open the door for interconnection proceedings in accordance with Art. 11 of the Swiss Telecommunication Act ("TCA") against all Swiss mobile operators. According to Art. 11 para. 1 TCA, an enterprise which has a dominant position in the market must offer interconnection according to the principles of non discrimination, transparency and cost orientation ("LRIC").

Pursuant to the applicable procedures in Switzerland, the regulator will, however, only become active upon request of a party, if the negotiations preceding the filing of the request regarding the interconnection prices or other terms of interconnection have failed. The party seeking interconnection will then have to file a request for determination of the interconnection prices an/or other conditions with the Federal Communication Commission ("ComCom"), who is in charge of determining interconnection prices and conditions.

Given the substantial amounts at stake for all parties involved, it is to be expected that the Swiss mobile operators will vigorously defend themselves in interconnection proceedings. However, unless the mobile operators reduce termination fees to an acceptable level, interconnection proceedings will become unavoidable.

According to the regulatory system in Switzerland, the ComCom only determines the interconnection prices between the parties to the proceedings. Parties who do not file or join an interconnection request with the ComCom, may not automatically benefit from the lower prices should they be finally determined by the ComCom. In principle, the parties who have valid interconnection agreements cannot retroactively request an adjustment of the prices that have been agreed, unless they can evidence that they have been intentionally misled (see also Art. 11 para. 4 TCA). In the latter case it must be ascertained that the applicable limitation periods for making such a claim do not expire. However, once the prices have been determined, a mobile operator must - based upon the non-discrimination obligation - offer the same conditions to all participants.

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