



Telecommunications Newsletter Switzerland

The Swiss Competition Commission Threatens Swisscom with a Fine in the Amount of CHF 489 Mio. for Abusive Pricing of Termination Costs

On October 2, 2002, the Swiss Competition Commission has commenced an investigation against the three mobile operators Swisscom, Sunrise and Orange regarding termination costs. The termination costs are invoiced by the mobile operator for the termination of a call on its network.

According to the Secretariat of the Swiss Competition Commission, all Swiss mobile operators have a monopoly on incoming calls on their own network. However, according to the Secretariat, it appears that only Swisscom Mobile used, during the period under review, its dominant position in the market to charge abusive termination fees. Swisscom has vigorously contested the allegations of a misuse of a dominant position in the market. The final order issued by the Swiss Competition Commission can be challenged with the Commission for Appeals in Competition Matters. The decision by the Commission for Appeals can be appealed to the Federal Supreme Court.

According to Art. 12 Swiss Act on Cartels and other Restraints on Competition, a person impeded by unlawful restraint of competition from entering or competing in a market may request:

- a. removal or cessation of the impediment;
- b. damages and reparation in accordance with the Swiss Code of Obligations;
- c. remittance of the illicitly earned profits in accordance with the provisions on conducting business without a mandate (constructive trust theory).

Should Swisscom finally be adjudged to have abusively priced the termination fees, market

participants who have paid excessive termination fees may be entitled to file a claim against Swisscom.

In order to avoid potential claims from becoming time barred, it is recommended to interrupt the statute of limitations from expiring by taking action against Swisscom, which could include the filing of payment summons or a request for execution of a waiver by Swisscom to raise the defence of the expiry of the statute of limitations.

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