



Federal Supreme Court confirms ComCom Decision against Swisscom to lower Fees for Porting Telephone Numbers

Facts

In a decision rendered on January 15, 2007, the Federal Supreme Court confirmed the order of the ComCom of July 3, 2006 in which the ComCom determined the charges for number porting for 2004 at CHF 17.65, for 2005 at CHF 15.15 and for 2006 at CHF 11.90, instead of the CHF 31 charged by Swisscom Fixnet AG.

Swisscom Fixnet AG, as expected, filed an appeal against the ComCom decision. In its decision rendered on January 15, 2007, the Federal Supreme Court fully confirmed ComCom's decision. The Federal Supreme Court rejected the arguments raised by Swisscom Fixnet AG, namely that the ComCom was not competent to decide on the issue and that there is no sufficient legal basis for the ComCom to determine the fees for porting telephone numbers.

The Federal Supreme Court argued that the rules regarding interconnection are to apply by analogy also to the determination of the fees for porting telephone numbers and that therefore the ComCom is competent to hear the case. Although it appears unclear from the wording of the law whether the porting of telephone numbers is a service which falls under the interconnection rules, there are good reasons in favour of such an assumption. Without an effective price regulation, the number portability obligation would be put in question, because it could be frustrated by charging excessive fees. Therefore, the Federal Supreme Court concluded that ComCom's price determination had a sufficient legal basis.

Comments

This decision of the Federal Supreme Court is the third final decision in interconnection proceedings ending with a defeat of Swisscom.

Presently, various interconnection proceedings continue to be pending against Swisscom Fixnet AG as well as against Swisscom Mobile AG for determination of interconnection fees and in particular, as regards mobile services, mobile termination fees. The decision rendered by the Federal Supreme Court on January 15, 2007 sends out a positive signal and it can be expected that the pending proceedings on determination of interconnection fees also for mobile services are likely to be decided in favour of the various claimants

Given these decisions, parties who have not yet filed interconnection proceedings against Swisscom Fixnet AG or Swisscom Mobile AG will need to seriously consider, whether or not to initiate interconnection proceedings in order to benefit, once a decision has been rendered, from the lower interconnection fees determined by the competent authorities. Additionally, those operators should also consider, whether or not there are ways to reclaim from Swisscom Fixnet AG, also for the past, interconnection fees that Swisscom Fixnet AG may have overcharged. A careful assessment of each individual case is of paramount importance.

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