



## Telecommunication Newsletter Switzerland

# Swisscom Suffers Another Setback: ComCom Orders Swisscom to Offer Bit-Stream Access

### Facts

On April 10, 2007 TDC Switzerland AG ("Sunrise") operating under the brand name "sunrise", requested the Swiss Communication Commission ("ComCom") to order Swisscom Fixnet AG ("Swisscom"), the former Swiss monopolistic telecommunication provider, to offer bit stream access on a transparent and non discriminatory basis as set out in Art. 11 para. 1 lit. b of the Swiss Telecommunication Act ("TCA").

Swisscom requested that Sunrise's motion be rejected, arguing in substance that Swisscom has no dominant position in the area of fast bit stream access.

If the question of market dominance is disputed in interconnection proceedings, the Federal Communication Office will consult with the Competition Commission. In its expert opinion of September 3, 2007<sup>1</sup>, the Competition Commission found that although there is a certain degree of competition, in particular from the cable network providers, such competition was of limited effect only and that Swisscom could therefore largely act independently in the sense of Art. 4 para. 2 Swiss Cartel Act. The Competition Commission therefore found Swisscom to have a dominant position pursuant to Art. 11 para. 1 TCA in the market for fast bit stream access.

### Decision

Based upon the opinion from the Competition Commission, the ComCom has announced today that it has ordered Swisscom to offer fast bit stream access for a period of four years. The decision is subject to appeal and it is expected that Swisscom will challenge ComCom's decision.

### Comment

This is the first decision of the ComCom on unbundling, after the local loop unbundling was introduced in the TCA effective as of April this year. The issue of pricing of the fast bit stream access, if the decision is upheld on appeal by Swisscom, will likely take more time. But the speedy decision by the ComCom on the principle question is stunning, given that in the past the interconnection proceedings dragged on for years.

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<sup>1</sup> <http://www.weko.admin.ch/news/00008/030907-Gutachten-221107.pdf?lang=de>