



## Telecommunication Newsletter Switzerland

# Competition Commission Does Not Permit Merger Between Orange and Sunrise

### Facts

The merger between France Telecom SA (Orange) and Sunrise Communications AG (Sunrise) has been prevented by the Competition Commission. The Competition Commission argues that the merged enterprise will, together with Swisscom, the number one mobile operator in Switzerland and former state monopolist, lead to a collective market dominance.

As a consequence of the merger, only two mobile providers having their own infrastructure would remain operative in Switzerland. The Competition Commission argues that this will lead to a collective market dominance with the consequence that the two remaining providers will not compete effectively. For both remaining mobile providers there would be an interest to maintain their prices at a relatively high level, rather than competing with each other for market share.

The Competition Commission also found that the merger would not create sufficient synergies which would, as a result, ease the expected restraint on competition. Although it would create a larger enterprise which could compete against the number one mobile operator, the Competition Commission is of the opinion that sufficient incentive for competing against each other would not remain. The possibility of an entry of a new third party provider with its own network was viewed as extremely remote. Therefore, the Competition Commission found no sufficient disciplining effect by potential new market entrants. With three competitors in the market there remains, according to the Competition Commission, at least a certain degree of competition and room for innovation.

The decision is subject to appeal.

### Comment

The decision of the Competition Commission comes as a surprise. A merger of the number two and three competitors in a market and the risk of creating a duopoly must always be scrutinized carefully. However, in light of the dominant position of the number one provider, Swisscom, it would have appeared that a stronger number two would be beneficial to competition in the market. The Competition Commission did not share this view. Furthermore, it found itself unable to impose adequate conditions upon the merger, which could have prevented the risk of creating a duopoly, since such conditions could have been imposed upon the combined enterprise Orange and Sunrise only and not upon Swisscom. It appears that Swisscom (which is still majority state-owned) is the only one profiting from the ban of the merger.

Therefore, the question arises, once again, whether the Swiss telecommunication regime provides for sufficient regulation and remedies in order to discipline the participants in the market.

April 22, 2010

David Käzig

For further information please contact:  
David Käzig ([d.kaenzig@thouvenin.com](mailto:d.kaenzig@thouvenin.com))