



Telecommunication Newsletter Switzerland

Federal Administrative Court largely rejects Swisscom's appeal against the leased lines decision of the ComCom and remanded the case to the ComCom for further determination of cost oriented prices

Decision

By decision rendered on February 28, 2012 the Federal Administrative Court has largely rejected the appeal filed by Swisscom against ComCom's decision pursuant to which Swisscom was required to offer leased lines at cost oriented prices and remanded the case to the ComCom for further determination in accordance with the decision of the Federal Administrative Court.

In essence, the Federal Administrative Court followed ComCom's assessment of Swisscom's dominant position. The case was however, remanded to the ComCom for a technical correction on the cost allocation for the splicing costs.

On an other technical point, the Federal Administrative Court quashed the decision of the ComCom which required Swisscom to publish an offer for leased lines. The Court held that the ComCom had no authority to order the publication of such an offer and that the offer by Swisscom was to be made only to the alternative provider who initiated the proceeding with the ComCom. This ruling is in line with the Swiss concept, that the ComCom only decides upon cost oriented prices upon request and to the extent requested by a party and that a third party not privy to the proceeding is not automatically entitled to benefit from such a ruling.

Comments

Swisscom suffered again a defeat in its never ending attempt to discriminate alternative providers. The proceeding against Swisscom for determination of cost oriented prices for leased lines was initiated by the alternative provider already in September 2007.

Four years later there is still no final decision on cost oriented prices for leased lines. This is unsatisfactory. It is time to review the Swiss ex post system. The long time it takes until an enforceable decision is rendered is not in the interest of the consumers who may be able to benefit from lower prices ordered by the ComCom only for the future.

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