

Broadband Internet: Federal Supreme Court confirms fine imposed on Swisscom

In its ruling published today, the Federal Supreme Court rejected Swisscom's appeal against the ruling of the Federal Administrative Court of 14 September 2015 concerning improper pricing and confirmed the cartel fine of CHF 186 million imposed on Swisscom by the Federal Administrative Court. The ruling related to ADSL prices up to the end of 2007. Swisscom regrets this decision.

The Federal Supreme Court confirmed the allegation that Swisscom had charged its competitors improper prices for its Broadband Connectivity Service (BBCS) up to 31 December 2007.

Swisscom regrets the Federal Supreme Court's decision and believes that the sanction is unjustified:

- Swisscom did not hold a market-dominant position, as competition and price pressure on the part of cable networks already existed at the time of the investigation.
- The Swisscom offering enabled its competitors to market their own broadband Internet services from the outset. Swisscom continually improved this service in terms of price and bandwidth, meaning it could not constitute a means of obstructing competitors;
- The investigation relates to the first few years following the launch of ADSL and the initial losses – criticised by COMCO – in the broadband business as a result of new customer acquisitions were common during this period and are not open to challenge.
- Swisscom's (end customer) broadband Internet business (and that of efficient competitors) is profitable over the long term and a structural deficit or margin squeeze can therefore not exist.

Sanctions and provisions

Swisscom had to pay the fine of CHF 186 million imposed by the Federal Administrative Court and now confirmed by the Federal Supreme Court back in 2016. The Federal Supreme Court's ruling has no impact on the 2019 annual financial statements. The guidance for the current financial year remains unchanged.

Irrespective of the outcome of these proceedings, Swisscom will constantly strive as ever to improve its broadband offering in terms of scope of service and price, and will continue to invest heavily in upgrading the infrastructure for fast broadband provision in Switzerland. In 2019 alone, Swisscom has invested some CHF 1.6 billion in the Swiss infrastructure.

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Background

COMCO investigation

In October 2005, the Competition Commission (COMCO) launched an investigation against Swisscom for alleged improper BBCS pricing. Four years later, in its sanction ruling of 19 October 2009, COMCO concluded that Swisscom held a market-dominant position in the broadband market and that it had abused this position using a so-called margin squeeze (i.e. an insufficient margin between the input price and end-customer price) up to the end of 2007. This margin squeeze was deemed to have made it impossible for Swisscom's competitors to operate broadband Internet business profitably. As a result, COMCO imposed a fine of CHF 219 million against Swisscom. The company then lodged an appeal against this sanction ruling with the Federal Administrative Court.

Ruling of the Federal Administrative Court

In its ruling of 14 September 2015, the Federal Administrative Court partially upheld Swisscom's appeal against COMCO's sanction ruling concerning improper pricing of broadband services. The Federal Administrative Court in principle confirmed COMCO's allegation of misconduct, according to which Swisscom is deemed to have charged its competitors improper prices for its Broadband Connectivity Service (BBCS) up to 31 December 2007, meaning that they were unable to achieve adequate margins for their own end-customer products. It found that the fine of CHF 219 million imposed by COMCO was too high, however, and therefore reduced it to CHF 186 million. Swisscom lodged an appeal against this ruling with the Federal Supreme Court.