



Broadband Internet: Federal Administrative Court confirms COMCO decision and reduces fine

The Federal Administrative Court partially accepts Swisscom's appeal against the sanction ruling issued by the Competition Commission (COMCO) on 19 October 2009 for the alleged improper pricing of broadband services till the end of 2007 and reduces COMCO's imposed cartel fine of CHF 219 million to CHF 186 million. As a result of the decision, Swisscom will set aside a provision of CHF 186 million. In order to clarify important issues at the highest level of authority, Swisscom will lodge an appeal with the Federal Supreme Court.

The Federal Administrative Court has in principle confirmed COMCO's allegation of misconduct, according to which Swisscom is deemed to have charged improper prices vis-à-vis its competitors for its Broadband Connectivity Service (BBCS) up to 31 December 2007. However, it considers that the resulting fine imposed by COMCO of CHF 219 million is too high and has therefore reduced this to CHF 186.

Swisscom regrets the decision made by the Federal Administrative Court and maintains that the penalty is unjustified in view of the fact that

- Swisscom does not recognise that it held a market-dominant position, as competition and price pressure on the part of cable networks already existed at the time of the investigation;
- There was no obligation to offer BBCS. The voluntary offering by Swisscom enabled its competitors to market their own broadband Internet services from the outset, however. 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 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 (as well as that of efficient competitors) is profitable over the long term and a structural deficit or margin squeeze can therefore not exist;

In light of the situation and due to the nature of the decision, Swisscom will lodge an appeal with the Federal Supreme Court.

Swisscom to register the provision in the third quarter of 2015

Up until now, Swisscom has not set aside any provisions for the sanction proceedings. However, based on the decision by the Federal Administrative Court, Swisscom will now recognise a provision amounting to CHF 186 million as an expense in the third quarter of 2015. Operating income (EBITDA) will be adversely affected by this amount. For the financial year 2015 Swisscom expects an operating income (EBITDA) of over CHF 4.0 billion.



swisscom

Press release

COMCO investigation launched in October 2005

In October 2005, 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 the profitable operation of the broadband Internet business impossible for Swisscom's competitors. As a result, COMCO imposed a fine of CHF 219 million against Swisscom. The company then lodged an appeal against this sanction with the Federal Administrative Court.

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 continue to invest heavily in upgrading the infrastructure for fast broadband provision in Switzerland. In 2015 alone, Swisscom will invest approximately CHF 1.75 billion in the Swiss infrastructure.

Berne, 6 October 2015