



Federal Supreme Court ruling on mobile termination: No fine for Swisscom

The Federal Supreme Court today published its ruling on the sanction proceedings initiated by the Competition Commission in respect of mobile termination charges. It has upheld Swisscom's appeal against the Federal Administrative Court's finding that Swisscom holds a dominant position in the mobile termination market. It has also rejected the appeal lodged by the Federal Department of Economic Affairs against the ruling of the Federal Administrative Court.

In its ruling, the Federal Supreme Court states that Swisscom did not act improperly when setting mobile termination charges and that there is no legal basis to conclude that the company occupies a dominant position in the market. The Federal Supreme Court therefore agrees with Swisscom's arguments and has fully overturned the sanction ruling imposed by the Competition Commission in respect of mobile termination charges. As a result, Swisscom will definitely not have to pay the fine of CHF 333 million imposed by the Competition Commission.

In October 2002 the Competition Commission launched an investigation into the mobile termination charges of the three mobile phone operators Swisscom, Sunrise and Orange. These are the charges that a mobile phone operator levies on other telecommunications providers for terminating calls in its network. The Competition Commission found that Swisscom holds a dominant position in the market and had abused this position by levying unreasonably high charges on other telecommunications providers between 1 April 2004 and 31 May 2005. It therefore imposed a fine of CHF 333 million on Swisscom. At the same time, the Competition Commission continued its investigation into the mobile termination charges of all three mobile phone operators for the period after 31 May 2005. Following an appeal by Swisscom, the Federal Administrative Court confirmed Swisscom's dominant position in the mobile termination market but rejected the Competition Commission's finding of abuse and overturned the fine. Swisscom lodged an appeal with the Federal Supreme Court against the allegation that it occupies a dominant market position, while the appeal lodged by the Federal Department of Economic Affairs focused on the rejection of the abuse allegation and the overturning of the fine.



Today's ruling by the Federal Supreme Court confirms Swisscom's view that it negotiates mobile termination charges with the other telecommunications providers. If the other providers are dissatisfied with the outcome of the negotiations, they can file a complaint with the Communication Commission. Swisscom is therefore not able to set binding prices.

Swisscom has not set aside any provisions for the sanction proceedings. Today's decision by the Federal Supreme Court confirms its previous assessment.

Berne, 20 April 2011