

Swisscom astonished at Comco decision

The Swiss Competition Commission (Comco) has ruled that the proposed joint venture between Swisscom and the Fribourg energy supplier Groupe E for the comprehensive expansion of the fibre-optic network throughout the canton of Fribourg is not able to be subject to its examination. The Competition Commission has thus come to the conclusion, after months of consideration, that this project does not in fact constitute a joint venture. Swisscom is astonished by this decision.

In its decision, which will be published today, the Competition Commission comes to the conclusion that the joint venture planned by the partners does not meet the conditions for being considered a joint venture. The intention of the joint venture is to make possible the rapid expansion of a cost-effective fibre-optic network throughout the canton of Fribourg. The Competition Commission questions the full-function nature of the joint venture, on the grounds that it would not develop an independent business activity. However, both Swisscom and Groupe E take the view that all the conditions for the full functionality of the joint venture have been satisfied.

Swisscom and Groupe E provided the Competition Commission with all the relevant documentation as far back as September 2010. This makes the decision it has taken the Competition Commission over seven months to reach all the more astonishing. Particularly since the full-functionality requirement is a necessary precondition for the Competition Commission's issuing of the go-ahead for a joint venture in the first place. Swisscom and Groupe E are convinced that the contract documents submitted to the Competition Commission were well balanced, satisfied all the conditions for a joint venture and represent the best possible way of rapidly providing the whole of the canton of Fribourg with a cost-effective fibre-optic network while taking into account the interests of competitors and customers as well as the considerable investment risk borne by the partners. After examining the documents over several months, however, the Competition Commission is now seizing upon a point of form, so that the joint venture can only proceed in its proposed structure at the risk of direct sanctions.



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Swisscom and Groupe E will be analysing the Competition Commission's decision in depth and examining what further steps might be taken. The possibility of the parties appealing against this decision before the Federal Administrative Court cannot be excluded. What is already clear today, however, is that the Competition Commission's decision will result in a significant delay in the expansion of fibre-optic coverage in the canton of Fribourg as a result of a lack of legal certainty.

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