

Federal Administrative Court rules on offer obligation for leased lines

In a judgement announced on 6 March 2012 pertaining to leased lines, the Federal Administrative Court partially approved an appeal from Swisscom. The Communications Commission (ComCom) must re-evaluate the prices for leased lines in the period from 2007 to 2009. The Court, however, in principle confirmed ComCom's ruling. ComCom assumed that Swisscom has a market-dominant position for all transmission technologies and Ethernet services which are capable of being offered via leased lines and must offer its competitors cost-based prices. Swisscom will now review its leased-line offerings.

The subject of the judgement is a ComCom ruling from March 2010 concerning leased line proceedings against Swisscom filed by COLT Telecom Services AG. In the ruling, ComCom stated that Swisscom essentially commands a dominant position in the leased line market and is thus obliged to apply a cost-based pricing structure. As a result, it established prices for the leased lines requested by COLT retroactively for the period from 2007 through 2009. Not covered by the regulations are, in the view of ComCom, only those connections between communities for which there are at least two alternative offerings available in addition to Swisscom's offering.

In many regions, strong Swisscom competitors such as cable-network operators, electricity companies and alternative telecoms providers have high-performance infrastructures suitable for leased lines. Swisscom was thus of the opinion that ComCom's ruling does not sufficiently take into consideration actual business conditions and existing competition and thereby overregulates the leased-line market. Swisscom was also of the opinion that ComCom calculated the prices incorrectly and wrongly disregarded existing contracts. As a result, it filed an appeal with the Federal Administrative Court. On account of the legal uncertainty concerning the access service which was first introduced in 2007, Swisscom set aside provisions which are sufficient on the basis of present information.

The Federal Administrative Court only partially approved the Swisscom appeal and sent the matter back to ComCom for reassessment. The Court established in particular that ComCom incorrectly set



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prices for leased lines for the period from 2007 to 2009 and it also limited Swisscom's offer obligation to existing installations and services. In principle, however, the Federal Administrative Court confirmed Swisscom's offer obligation as established by ComCom. In the Court's view, this offer obligation also covers Ethernet services.

This judgement clarifies important fundamental questions concerning access regulations. Swisscom will now review in detail the implications of the judgement and modifications to the regulated leased-line offering. The judgement is final, no appeals are possible. The Federal Administrative Court has yet to issue a decision in a virtually identical case between Sunrise Communications AG and Swisscom concerning leased lines. Swisscom, however, expects a similar outcome.

Leased lines are point-to-point connections which enable exclusive data transmission and are used, for example, to network a company's various sites. Besides its commercial offering which includes all types of leased lines, Swisscom also currently offers leased lines with a bandwidth of up to 2 Mbps at cost-based prices outside of large cities.

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