



Telecommunication Newsletter Switzerland

No immunity from sanctions for "hard" competition clauses in cooperation agreement for fiber networks

According to the Swiss Competition Commission's press release dated September 5, 2009¹, the cooperation agreement between Swisscom (the former Swiss monopolist provider) and the utilities of the cities of Basel, Bern, Luzern, St. Gallen and Zurich ("Elektrizitätswerke") for the construction and operation of fiber networks contain so called "hard" competition clauses which cannot be exempted from sanctions in advance.

The parties to the cooperation agreements made use of their right to submit critical provisions of their cooperation agreement to the Swiss Competition Commission, seeking an exemption from sanctions for the entire duration of the cooperation agreements of approximately 40 years.

The Competition Commission's Secretariat however found that the clauses submitted by the parties contained agreements as to pricing and quantity which may potentially seriously hinder competition. In such a case, an exemption from sanctions is not possible, since the Competition Commission had not the powers to grant exemptions from the application of the Competition Law.

The Secretariat did not prohibit the cooperation, since the effect of the clauses on effective competition can only be assessed once they have an impact on the market. It is now upon the parties to operate the fiber network in compliance with Competition Laws.

The Competition Commission appears to have already been notified of complaints which may be an indication of the anticompetitive effect on the markets concerned.

Should the Competition Commission find that the operation of the fiber networks violates Swiss Competition Law, it already made clear that it will take appropriate measures.

September 7, 2011

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¹<http://www.news.admin.ch/NSBSubscriber/message/attachments/24091.pdf> (September 6, 2011)