



St. Gallen, 5 October 2021

## **Press Release**

regarding judgment B-161/2021 of 30 September 2021

### **Swisscom must comply with fibre-optic standards**

**The Federal Administrative Court confirms the precautionary measures ordered by the Competition Commission against Swisscom, according to which the existing standards for the expansion of the fibre-optic network have to be observed.**

In February 2020, Swisscom announced its new network expansion strategy. As part of that strategy, Swisscom planned to expand the fibre-optic network from the local connection centre to individual homes and businesses over the following five years, thus increasing the proportion of connections from 32 percent to 60 percent. Swisscom, while implementing the expansion on its own, intended to use a new technology based on a single-fibre model with a tree structure (P2MP, point-to-multipoint topology).

This technology deviates from the fibre-optic standard applied thus far, which had been agreed between 2008 and 2012 by the telecommunications companies in the framework of the Round Table on fibre-optic networks launched under the aegis of the Federal Communications Commission and the Federal Office of Communications. The existing standard relies on a four-fibre model with a starlike structure (P2P, point-to-point topology) in which four separate optical fibres are laid from the connection centre to the end consumer's connection point. This ensures an open competitive matrix with what is known as "Layer 1 access" that offers competitors access to a separate optical fibre. This system ultimately ensures non-discriminatory and non-monopolistic access to the fibre-optic network.

#### **Precautionary measures**

In December 2020, in the wake of initial inquiries undertaken across the industry as of February 2020 and the filing by a competitor of a complaint against Swisscom, the competition authorities opened an investigation to ascertain the legality of Swisscom's new network expansion strategy. The Competition Commission (ComCo) presumed that, in implementing its new network expansion strategy, Swisscom, as a dominant undertaking, is abusing its market position within the meaning of Article 7 of the Cartel Act. Therefore, as a precautionary measure, ComCo provisionally prohibited Swisscom from pursuing its network expansion until the conclusion of the investigation unless it could ensure Layer 1 access. In January 2021, Swisscom appealed this ruling to the Federal

Administrative Court (FAC) requesting that the precautionary measure be lifted in its entirety.

### **Confirmation by the Court**

This case raises several different complex technical and economic issues at the same time as legal points of prejudicial significance under cartel law and procedural law. However, Swisscom was unable to credibly substantiate to the Court that there were sufficient technological or economic grounds to deviate from the fibre-optic standard. Moreover, the regional supply policy arguments put forward by Swisscom for equipping peripheral regions with high-speed broadband networks cannot justify a restraint of competition. On the contrary, the Court believes at this stage that Swisscom's new network expansion strategy must be presumed to constitute unlawful behaviour on the part of a dominant undertaking by limiting technological development, within the meaning of Article 7 of the Cartel Act.

This judgment may be appealed to the Federal Supreme Court.

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### **About the Federal Administrative Court**

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 353 employees (297.3 FTE) and its 73 judges (65.15 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,200 judgments every year.