

Competition - Switzerland

Commission investigates cooperation in fibre-optic sector

Contributed by [Tavernier Tschanz](#)

April 21 2011

On January 4 2011 the Competition Commission announced that it has launched a preliminary investigation into a cooperation agreement between Swisscom and the city of St Gallen to extend the city's fibre-optic network. The cooperation agreement was submitted to the commission, which now plans to examine the agreement in more detail amid concerns that it could reduce competition for broadband internet access. In recent months the commission has received several notifications regarding similar cooperation in the fibre-optic sector.

The contemplated cooperation between the city of St Gallen and Swisscom provides for the construction of the fibre-optic network in that city. The intention is to lay many fibres in each area of use (ie, for flats, houses and commercial premises), with the hope of guaranteeing effective competition by providing other operators with non-discriminatory access to the fibre-optic network (the so-called 'multi-fibre model'). The agreement will guarantee Swisscom long-term access to up to two fibres per business and household. In return, Swisscom will assume around 60% of the required investment, costs as well as the maintenance and operating costs. Swisscom has claimed that the agreement will guarantee the construction of an open-access infrastructure and enable real competition while avoiding the need to lay parallel networks.

The investigation must ascertain whether the contemplated cooperation might lead to the creation of a monopoly for Swisscom in relation to the fibre-optic network in St Gallen and, if so, whether remedies could be provided for the alternative operators, many of which are alarmed at Swisscom's rapid rise to dominance of the fibre-optic sector. Analysts estimate that Swisscom still holds a 55% share of the total broadband market in Switzerland – chiefly through its asymmetrical digital subscriber line offerings – while cable operators represent the largest portion of the competition, with a market share of just under 30%. However, while the fibre-optic sector is nascent and commands only a minor market share, Swisscom has dominated all investment and roll-out in this area.

Swiss competition law provides for a system of non-mandatory preliminary notification of potentially unlawful agreements and practices. Undertakings have the option formally to notify the commission of agreements or practices which may restrain competition before they become effective. Once such a filing is made, the undertaking may carry out the notified agreement or practice without risk of being penalised, provided that the commission does not inform the undertaking that it has opened an investigation. It is particularly advisable to file such a notification where the agreement or practice in question entails significant investment.

In recent months the commission has received several notifications regarding cooperation arrangements between electricity distributors and Swisscom in the fibre-optic sector. The city of St Gallen is the first to have notified certain terms of its cooperation agreement with Swisscom. The commission intends to establish, in the context of this investigation, standards for all cooperation agreements regarding the establishment and development of fibre-optic networks.

On January 27 2011 the Competition Commission also launched a preliminary investigation into a cooperation agreement between Swisscom and the public utility of Geneva to extend the fibre-optic network in that city, and on March 3 2011 launched a similar investigation into a similar agreement between Swisscom and the public utility of Zurich. On April 15 2011 preliminary investigations were also launched into cooperation agreements between Swisscom and the cities of Basel, Berne and Lucerne.

For further information on this topic please contact [Silvio Venturi](#) or [Pascal Favre](#) at [Tavernier Tschanz](#) by telephone (+41 22 704 3700), fax (+41 22 704 3777) or email (

Authors

[Silvio Venturi](#)



[Pascal G Favre](#)



venturi@tavernierschanz.com or favre@tavernierschanz.com).

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