

Competition - Switzerland

Competition Commission clears Sunrise and CVC Capital Partners concentration

Contributed by [Tavernier Tschanz](#)

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On October 14 2010 the Competition Commission announced that it had approved the proposed acquisition of Sunrise by CVC Capital Partners from TDC. The preliminary investigation revealed no indications that the proposed concentration could create or strengthen a dominant position in Switzerland. The concentration was cleared after a first-stage assessment, without conditions or commitments.

Sunrise is the largest privately held telecommunications provider in Switzerland. TDC is the leading provider of communications solutions in Denmark with a strong Nordic focus – TDC's activities outside the Nordic region primarily consist of Sunrise. CVC Capital Partners is one of the world's leading private equity and investment advisory firms.

Swisscom (a successor company to the formerly state-owned PPT), Sunrise and Orange (which is owned by France Telecom) are the three leading economic operators in the Swiss market for mobile telephones. The first-stage assessment revealed that the acquisition of Sunrise by CVC Capital Partners would not modify the market structure. Indeed, after completion of the concentration, the Swiss market for mobile telephones will remain characterised by the presence of three network operators. According to the commission, this should ensure that some dynamism is retained and guarantee future innovation.

Under Swiss law, the substantial test to assess a concentration is very high compared to other jurisdictions (eg, the European Union). Pursuant to Article 10 of the Competition Act, the commission may prohibit a concentration or authorise it subject to conditions and obligations if the investigation indicates that the concentration creates or strengthens a dominant position liable to eliminate effective competition and does not improve the conditions of competition in another market such that the harmful effects of the dominant position can be outweighed.

TDC – the holding company of Sunrise – had initially planned to sell Sunrise to France Telecom so as to enable the integration of Sunrise into Orange. On April 22 2010 the Competition Commission prohibited the proposed concentration between France Telecom and TDC's respective subsidiaries in Switzerland, on the grounds that the merged entity would have been collectively dominant with Swisscom in the Swiss market for mobile telephones, and that the most active network operator would have disappeared. Indeed, had the merger gone through, only two operators with their own network would have existed in Switzerland. According to the commission, its in-depth analysis showed that these two operators would have held a collective dominant position which was likely to impede effective competition. Moreover, it was deemed unlikely that the potential new entrants would have exercised a credible countervailing power. Therefore, the commission held that it would have been more advantageous for the merged entity and Swisscom to maintain high prices than to compete with one another to gain market shares. No commitments were found to address the commission's concerns and the merger was therefore prohibited.

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 (venturi@taverniertszchanz.com or favre@taverniertszchanz.com).

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Authors

[Silvio Venturi](#)



[Pascal G Favre](#)



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