



St. Gallen, 22 November 2024

Press Release

regarding judgments A-3607/2022, A-3629/2022, A-4762/2022 and A-4764/2022 of 12 November 2024

Judgments on the private economic activity of Swiss Post

The Federal Administrative Court resolves fundamental legal issues relating to the private economic activity of Swiss Post. The Court rules in favour of two private-sector companies at dispute with Swiss Post.

In October 2020, Swiss Post acquired KLARA Business AG (now ePost Services AG), a private-sector company developing and distributing software in the fields of accounting, as well as customer and order management. In July 2021, Swiss Post took over Livesystems AG, a digital outdoor advertising company. Today, both companies operate as independent subsidiaries of Swiss Post.

Two complaints to the supervisory authorities

Both its subsidiaries ePost Services AG and Livesystems AG operate outside Swiss Post's basic service mission. Swiss Post is thus in direct competition with private companies like Abacus Research AG and Goldbach Neo OOH AG, which both offer the same or similar services. These two companies filed separate supervisory complaints with the Federal Postal Services Commission PostCom and with the Federal Office of Communications OFCOM. They claimed before both supervisory authorities that the private economic activity of Swiss Post was unlawful. Both take-overs should be reversed, or action should be taken to avoid distortions of competition at least. Both PostCom and BAKOM dismissed the two supervisory complaints on the ground that neither company had party status with regard to the private economic activity of Swiss Post. Both competitors lodged appeals with the Federal Administrative Court (FAC) against the dismissal.

Judgments of the Federal Administrative Court

In its judgments, FAC considers the case law of the Federal Supreme Court relating to the private economic activity of the State. It establishes that the economic freedom enshrined in the constitution does not offer the private sector any general protection against competition. The same applies to the State's private economic activity that merely adds to the number of private-sector competitors. However, the constitution imposes limits on the private economic activity of the State: the activity must have a legal basis, and be in the public interest, proportionate, and competition neutral. In line with these requirements, the activity of Swiss Post is regulated and delimited by the Postal Services Organisation Act: Swiss Post is responsible for ensuring basic service and is thus entitled to provide the associated services.

Against this backdrop, FAC further develops the existing case law. It establishes that party status cannot be acquired through a supervisory complaint as a basic principle. However, when private companies can demonstrate that a state-owned enterprise lacks an adequate legal basis for a given private economic activity, or that its behaviour is not competition neutral, as in the case at hand, the relationship becomes especially proximate. In such cases, private companies cannot be denied party status on a principal basis. PostCom has full responsibility for examining whether the private economic activity of Swiss Post complies with the constitutional limits. For these reasons, FAC upholds the appeals and refers the matter back to PostCom. PostCom must render a final ruling on the appellants' party status. If necessary, it must also examine whether Swiss Post has sufficient market-access authority for its private economic activity.

These judgments 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 375 employees (314.7 FTE) and its 73 judges (65 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 6,500 judgments every year.