

Competition - Switzerland

Competition Commission Publishes Annual Report

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The Competition Commission has published its 2008 annual report. According to the commission, 2008 was a year of activities designed to prevent distortions of competition. This update summarizes the activities undertaken by the commission during 2008.

The commission has established contacts with procurement agencies and major bodies in the field of public procurement. In a further measure, the secretariat of the commission conducted external training sessions for employees of federal procurement agencies in order to raise their awareness of the issue of bid rigging.

In the course of its advisory procedures, the commission was able to clarify and refine practices relating to recommended prices. It may happen that trade associations and industry organizations induce or encourage direct or indirect price-fixing agreements between their members by issuing tariffs, recommended prices or price lists. Descriptions of services or cataloguing services with tariffs or prices are normally treated as price-fixing agreements. The commission held that at least two alternative instruments which comply with the requirements of the Competition Act are available to the associations to this end. Services which are described without details of tariffs or quantities do not fix prices and thus do not restrict freedom to determine prices. The second permissible practice is the publication of historical, survey-based and aggregated figures. Such data must be accessible to consumers and the tariffs must be non-binding. This data must be compiled and published by independent third parties.

According to the commission, 2008 was also notable for decisions in individual cases that will have generally applicable practical implications. From the groundbreaking Supreme Court decisions on the Internal Market Act made in response to appeals by the commission relating to authorization procedures for practising a profession, it was possible to establish a precedent with signalling effect for the whole of Switzerland. These decisions also confirmed the importance of the power that allows the commission itself to appeal against cantonal decisions on market access restrictions. The commission has announced that it will use this option in the future in order to resolve fundamental issues.

With regard to direct penalties, the commission imposed a fine on a subsidiary of Galenica AG for its abuse of a dominant position in connection with the publication of the medicinal products compendium. In addition, the secretariat requested that penalties be imposed on Swisscom for its pricing policy in the field of asymmetric digital subscriber line broadband Internet. The secretariat also conducted house searches in several cases of possible hard price-fixing agreements. The secretariat continued ongoing investigations in 2008, and there were disputes before the appeal courts over procedural issues in several cases. According to the commission, this regularly led to proceedings being prolonged and additional resources being tied up. The Federal Criminal Court and the Federal Supreme Court have issued clarifying decisions in relation to competition authority procedures for house searches and have authorized the competition authority to remove the seals from evidence which has been seized and sealed.

Although vertical agreements were a major issue in 2008, decisions relating to this matter were not expected until 2009. Nonetheless, according to the commission, the ongoing investigations in this regard had been completed.

The competition authorities concluded two significant merger cases, *Coop/Carrefour* and *fenaco/Steffen-Ris*, imposing requirements to ensure that competition is maintained. In particular, the *Coop/Carrefour* operation represented a significant proportion of the concentration process characterizing the retail distribution sector in Switzerland. Swiss law allows this trend, in line with its relatively favourable view of

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concentrations compared with EU law. The commission concluded that the Coop/Carrefour concentration strengthened the collective dominant position of Coop and Migros in the downstream distribution market to the extent that effective competition is at risk of being eliminated. However, the merger was cleared because of Coop's commitment, among other things, to turn over some existing sites to third parties, notably the German discount retail stores Lidl and Aldi. As to the upstream supply market, Coop committed to maintain commercial relationships with suppliers having achieved more than 30% of their turnover with Carrefour from 2005 to 2007, provided that their products were offered at competitive price.

Also of major importance in 2008 was the work done on the evaluation of the Competition Act with a view to submitting a report to Parliament.

The commission also reported that its secretariat did a considerable amount of preparatory work for the annual conference of the International Competition Network, which took place in Zurich from June 3 to June 5 2009.

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