

Reporting Period : April 00 - June 00

ADMINISTRATIVE AND JUDICIAL DECISIONS

Anti-Competitive Practices

- **Automobile Industry** On May 18, 2000 the FCC closed its investigation against Volkswagen (see 1998/4 Report). The FCC investigated alleged distribution practices of Volkswagen according to which EU dealers were prevented from selling cars to customers domiciled in Switzerland. The FCC found that the prices gaps between Switzerland and neighboring countries were too low to allow massive parallel imports.
- **Beverages** The FCC has closed its investigation against the cantonal associations of Gastrosuisse for fixing prices (see 1999/2 Report). The FCC ruled that the investigation had no more object as the parties had agreed not to issue in the future "recommended" prices as those issued in the past and to comply with competition rules.
- **Complementary Insurances** On May 12, 2000, the FCC decided to open an investigation against several insurances companies (among which Unimedes, Helsana, Concordia and CSS) and several private clinics (among which Klinik in Schachen, Klinik Sonnenblick, Klinik Villa im Park, Klinik Schützen Rheinfelden). These entities allegedly entered into an agreement with the object to fix prices charged to patients.
- **Doctors** On May 1, 2000, the FCC opened an in-depth investigation against the members of the Association of Physicians of Zürich (to which 95% of the Zürich physicians belong). The investigation is directed against a compulsory tariff list issued by the Association. The FCC declared that it would review any similar list issued by similar associations in other cantons.
- **Driving Schools** On May 8, 2000, the FCC held that the prices recommended by the Fribourg Association of Driving Schools amounted to an unlawful agreement under the Competition Act. The FCC indicated that it would review any similar recommended tariffs in other cantons.
- **Drugs** On June 15, 2000, the FCC completed a two-year investigation in the sector of distribution of drugs. The FCC charged Sanphar, a Geneva-based association composed of the Swiss pharmaceuticals companies, with fixing prices and discounts. The FCC found that Sanphar's recommended tariffs were followed at each stage of distribution (producers, importers, wholesalers, pharmacists and physicians). As a result of the FCC's decision, Sanphar decided its own winding up.
- **Electricity** On June 14, 2000, the FCC opened an in-depth investigation against the Entreprises Electriques Fribourgeoises (EEF) for refusal to transport electricity provided by Watt Suisse AG to two subsidiaries of the Fédération des Coopératives Migros. EEF, which has a de facto monopoly in the canton of Fribourg, might have abused of its dominant position by refusing the access to essential facilities to Watt Suisse AG. The finding of an abuse would be important as it would ensure the obligation to transport electricity before the entry into force of the new law on liberalization of electricity which will contain such an obligation.

- **Mobile Telephony** On May 16, 2000, the FCC opened an in-depth investigation against Swisscom, DiAx and Orange, the three operators in the mobile telephony in Switzerland. The FCC will enquire into the prices charged by the three operators which appear to evolve simultaneously and in the same proportions. Such evolution might indicate an abuse of a collective dominant position.
- **National Exhaustion of Patent Rights** In a landmark (and controversial) decision, the Swiss Supreme Court ruled that the holder of a patent right may block parallel imports into Switzerland (the Court thus adheres to the principle of national exhaustion). The claim had been filed by Kodak (Switzerland) SA against Jumbo Markt AG which sold in Switzerland Kodak products lawfully put on the market in U.K. Patent rights thus receive a specific treatment among intellectual property rights as the Swiss Supreme Court had adhered, in a recent past, to the principle of international exhaustion for copyrights and trade marks.
- **Newspapers** The FCC has closed its investigation against Corriere del Ticino, Giornale del Popolo and La Regione for fixing prices (see 1999/3 Report). The FCC ruled that the investigation had no more object as the newspapers had agreed, in a formal agreement with the Secretariat of the FCC, to comply with competition rules.
- **Veterinary Products** On May 25, 2000, the FCC opened an in-depth investigation against producers, distributors and veterinary surgeons in the sector of distribution of veterinary products. The distribution of such products was regulated in the past by an exclusive distribution agreement between the Association of Producers and Wholesalers (Verband Schweizerischer Tierarzneimittelhersteller) and the Société des Vétérinaires Suisses. Although the agreement was terminated in 1993 the FCC found that the agreement was de facto still in effect.

Merger Control

- **Newspapers** On June 9, 2000, the FCC decided to open a second stage investigation of the creation of Berner Oberland Medien SA, a joint venture company by Schaefer Thun SA and G. Maurer SA. Economic control over Berner Oberland Medien SA should be held by the Berner Zeitung.
- **The FCC cleared the following transactions**
 - The formation of Convenience Management SA, a joint venture company, by the Swiss Federal Railways, Migros and Kiosk AG.
 - The acquisition by Basler Kantonalbank of a 40,7% stake in Coop Bank.
 - The creation of Dow Jones Reuters Business Interactive, a joint venture company, by Dow Jones & Company and Reuters Group p.l.c.
 - The creation of Dangaard Telecom Holding A/S , a joint venture company, by FreeCom Distribution & Service GmbH (which is held by BHS Holding GmbH & Co KG and Debitel AG which in turn is controlled by Swisscom) and Dangaard Holding A/S (which is controlled by Fleggaard Holding A/S and Fleggaard Partners A/S).

- The acquisition of joint control over Raitour Suisse SA and RailAway AG by Kuoni Holding AG and the Swiss Federal Railways.
- The acquisition by Ringier AG of a 50% participation in Sat 1 AG, a company previously under the sole control of Sat 1 Satellitenfernsehen GmbH.
- The acquisition by Rheinmetall DeTec AG of the sole control over Oerlikon Contraves AG and Oerlikon Aerospace Inc.
- The acquisition by Volvo AG of the sole control over Scania AG.
- The merger between Gétaz Romang SA and Miauton Holding SA.
- The creation of European Aeronautics, Defense & Space Company N.V. by Lagardère S.C.A., DaimlerChrysler AG and Sociedad Estatal de Participaciones Industriales.