

Reporting Period : April 01 – June 01

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **New Act on Radio and Television** Interested parties had until the end of April to submit their comments on the proposed draft Act on radio and television. Pursuant to the draft, the Swiss Broadcasting Corporation (SRG) would receive all the license fees (which are now splitted between SRG and private broadcasting companies), but would have to renounce to advertising revenues. Access to market would be facilitated for private broadcasting companies. Most reactions to the proposed draft are unenthusiastic. SRG notes in particular that the draft law imposes additional restrictions and strengthens government powers. On their part, private broadcasting companies ask for at least 10 % of the fees and oppose the proposed ban on sponsoring and advertising for drugs, calling for advertising regulations drafted after those in force in other countries.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **Animal Health and Poultry Genetics** The Swiss Supreme Court confirmed that a concentration must be notified in Switzerland as soon as the thresholds provided by the Competition Act are reached, irrespective of whether the undertakings concerned have a presence in Switzerland. The Swiss Supreme Court thus reversed the decision of the foreign Appeals Commission of July 4, 2000 (see 2000/2 report), in relation with the fines imposed by the FCC on Merck & Co and Rhône-Poulenc for setting up Merial, a concentrative joint venture, prior to FCC's approval. The Swiss Supreme Court held that if the thresholds are reached, a concentration must presumptively be deemed to have the potential of producing effects on the Swiss market. The concentration must therefore be notified and may not be carried out prior to authorization. The Supreme Court further pointed out that, when determining whether the thresholds have been reached, the participating companies' overall turnover must be taken into account and not simply their turnover in the sectors to be merged. Noting that EU control of proposed concentrations requires prior notification to the EU Commission, the Supreme Court suggested that notification of a concentration requiring Swiss as well as EU clearance might be simplified for foreign companies by allowing them to file simultaneous notification to the EU Commission and to the FCC on forms providing similar data.
- **The FCC cleared the following transactions** The creation of Mittelland Zeitung, a joint venture set up by the publishing firms Aargauer Zeitung AG, Vogt-Schild/Habegger Medien AG, Dietschi Druck AG and Zofinger Tagblatt AG.
 - The acquisition by BertelsmannSpringer, Business to Business (Schweiz) AG of Schück Söhne AG.

- The acquisition of control by Hypo- und Vereinsbank AG (München) over Bank Austria AG Wien.
- The creation of Securitrans AG, Public Transport Security, a joint venture company, by the Swiss Federal Railways and Securitas AG.
- The merger between The Chase Manhattan Corporation and J.P. Morgan Chase & Co. Incorporated, creating J.P. Morgan Chase & Co.
- The acquisition of control by Bombardier Transport Europe GmbH over Adtranz.
- The acquisition by Siemens Aktiengesellschaft, München of sole control over Mannesmann Dematic AG, Mannesmann Demag Kraus-Maffei AG, Mannesmann Sachs AG and Mannesmann VDO AG.
- The acquisition by Büchler Grafino AG of control over important assets of Hallwag AG, a publishing company.
- The acquisition by BASF AG, Ludwigshafen of 30% of DyStar Textilfarben GmbH, Francfort, a joint venture created in 1995 by Bayer AG and Hoechst AG.

Anti-Competitive Practices

- **Banking** The FCC imposed a fine on Banque Nationale de Paris for failure to notify the acquisition of Paribas. The FCC confirmed that the amount of fines depends on the market power of the undertakings concerned (determined according to their annual turnover in Switzerland), the degree of restriction on competition and the risk of elimination of competition.
- **Billposting** On May 7, 2001, the FCC cleared the acquisition by the French Group JC Decaux of a 30% stake in Affichage Holding SA, the leader in the billposting market in Switzerland (see 1999/3 report). The investigation showed that other major companies (such as TDI Worldwide, Wall AG or Ströer) were active on the Swiss market and that the existence of other advertising media provided for sufficient competition.
- **Books** On May 21, 2001, the Appeals Commission confirmed two decisions of the FCC (against the Swiss Association of Booksellers and Publishers and against the Börsenverein des Deutschen Buchhandels) prohibiting the retail price maintenance system applied in the German-language book industry in Switzerland (see 1999/3 report). The Appeals Commission considered that this retail price system amounted to horizontal agreements indirectly fixing prices and was therefore presumed to eliminate effective competition. The Appeals Commission further held that remaining competition was not sufficient to rebut the presumption of elimination of competition.
- **Dental Supplies** The FCC closed its investigation against Kaladent AG, a Swiss company active in the dental supplies market, for potential abuse of dominant position (see 1999/3 report). The FCC considered that Kaladent AG held no dominant position.
- **Driving Schools** Ruling on an appeal brought by the Fribourg Association of Driving Schools against FCC's decision of May 8, 2000 (see 2000/2 report), the Appeals

Commission confirmed that the prices recommended by the Association amounted to an unlawful agreement under the Competition Act.

- **Motor Vehicle Insurance** On June 27, 2001, the FCC closed its investigation against insurance companies in the area of civil liability insurance for motor cars in connection with premium increases (see 2000/1 report). No indication of unlawful agreement on premium increases was found.
- **Weather Forecasts** The Swiss Supreme Court overruled the FCC's decision of September 6, 1999, against the Swiss Institute for Weather Forecast (SIWF) (see 1999/3 report). The FCC found that SIWF had abused its dominant position by selling data to a private entity for twice the price charged to a state-owned entity. As prices were fixed by the government, the Supreme Court held that decisions regarding prices were not caught by the Competition Act (Art. 3 of the Competition Act). The Supreme Court, reminding that the Competition Act remains applicable to state-owned entities which have commercial, private activities, suggested that the Competition Act would be applicable to MétéoSuisse, the entity which will replace SIWF pursuant to the new applicable regulations, including with respect to prices which would be freely fixed by MétéoSuisse.