

## **Reporting Period : April 03 – June 03**

### **ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS**

*Competition Act.* The amendment of the Competition Act submitted by the Swiss Federal Council for parliamentary debate on November 7, 2001, has been enacted by Parliament on June 20, 2003. It may be recalled that, among other modifications, the amendment provides for a system of non-mandatory preliminary notification of potentially unlawful agreements and practices, the power of the FCC to impose direct administrative fines on members of a hardcore cartel and on undertakings abusing their dominant position (the fines can reach up to 10 % of the turnover achieved in Switzerland during the last three financial years) or the power to reduce or to omit fines when cooperation with hardcore cartel members allows the cartel to be discovered or suppressed, and the removal of the specific notification thresholds in the media sector.

The original draft was amended by Parliament to incorporate important additional elements. First, vertical agreements will be presumed to eliminate workable competition when they determine minimum or fixed prices of resale, or when they lead to geographical market sharing. These presumptions are important from a procedural point of view in that they enable the authorities to issue decisions without conducting an in-depth analysis of the market. They mark an important step forward in the departitioning of the Swiss market. Secondly, the Competition Act will not apply to effects on competition that result exclusively from laws governing intellectual property, with the exception of restrictions on imports based upon intellectual property rights.

The publication of the amendment in the Federal Journal on July 1, 2003, marks the beginning of a 90-day referendum period. If no referendum takes place, it is likely that the amendment will enter into force at the beginning of 2004.

### **ADMINISTRATIVE AND JUDICIAL DECISIONS**

#### *Merger Control*

- *Supermarkets*

On May 19, 2003, the FCC cleared the acquisition of Waro by Coop. The FCC considered that the concentration would not create, nor strengthen a dominant position in the relevant supply and distribution markets. In particular, the FCC held that the competition was strong enough in the distribution market and that the recent entry into the domestic retail business by foreign companies had given a new dynamic to such market. The FCC further held that the concentration would not lead to a collective dominant position. Indeed, the investigation revealed no signs of parallel behavior in the price evolution of the undertakings concerned. It further showed that at present, even important distributors might not behave independently of the conditions existing in the distribution market. As to the supply market, the FCC considered that the addition of market share was too small (2 %) to create or strengthen a dominant position.

(FCC press release, May 20, 2003, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))

- **Banking**

On May 12, 2003, the FCC decided not to extend the obligation imposed on UBS AG to participate in the common institutions of the Swiss banks (i.e., Telekurs Holding SA, SIS Swiss Financial Services Group and SECB Swiss Euro Clearing Bank Sàrl) and to purchase their services. It may be recalled that such obligation – which aimed particularly at strengthening the competition in the retail banking sector – was imposed by the FCC on UBS SA in connection with the clearance, in 1998, of the merger between Union Bank of Switzerland and Swiss Bank Corporation. The FCC held that structural changes had occurred in the banking sector over the last years and that new providers of financial services, active in the traditional fields of the common institutions of the Swiss banks, had recently entered Switzerland. According to the FCC, this made an extension of the obligation for a further 5 year period unnecessary.

*(FCC, press release, May 12, 2003, [wettbewerbskommission.ch/site/e.html](http://wettbewerbskommission.ch/site/e.html))*

- **Newspapers**

- On May 16, 2003, the FCC decided to conduct an in-depth investigation of the acquisition by Neue Luzerner Zeitung AG – a company which publishes the most important daily newspaper of Central Switzerland – of a shareholding of 30 % in Anzeiger Luzern AG, a company which publishes the two most important free advertisement papers of Central Switzerland.

*(FCC, press release, May 16, 2003, [wettbewerbskommission.ch/site/e.html](http://wettbewerbskommission.ch/site/e.html))*

- On June 10, 2003, the FCC opened an in-depth investigation of the acquisition of 20 Minuten (Schweiz) AG – a company publishing "20 Minuten", the third largest newspaper in Switzerland in terms of daily readers – by Express Zeitung AG, a company jointly held by Tamedia AG and Berner Zeitung AG. The preliminary investigation revealed signs that the acquisition might create or strengthen a dominant position in the market for the supply of regional and local advertising space in the region of Bern and Zürich as well as in the national readers market of newspapers for commuters.

*(FCC, press release, June 10, 2003, [wettbewerbskommission.ch/site/e.html](http://wettbewerbskommission.ch/site/e.html))*

### ***Anti-Competitive Practices***

- **Banking**

On May 27, 2003, the FCC closed its investigation, opened in May 2002, against the cooperation project between Crédit Suisse and Banque Linth. Among other things, the project foresaw that Banque Linth would stop using its current IT platform and use that of Crédit Suisse, and that Banque Linth would distribute Crédit Suisse products. The investigation was particularly designed to determine which effects a cooperation between a small-sized and a large-sized bank in the fields of IT may have on the competitive behavior of the banks concerned. However, the investigation became purposeless after Banque Linth had announced the withdrawal of its participation in the project.

*(FCC, press release, May 27, 2003, [wettbewerbskommission.ch/site/e.html](http://wettbewerbskommission.ch/site/e.html))*

- **Travels**

On May 2, 2003, the Secretariat of the FCC closed its preliminary investigation against Helvetic Tours and MTravel. The Secretariat held that the cooperation between the two travel agencies in the field of charter flights was for a limited time (summer 2003) and only intended to better exploit the available capacities on long-distance flights. The Secretariat further held that there were no signs of a price-fixing agreement. According to the Secretariat, similarities in catalogue prices may be attributed to the fact that catalogues are published in successive stages, allowing competitors to amend their offers.

*(FCC, press release, May 2, 2003, [wettbewerbskommission.ch/site/e.html](http://wettbewerbskommission.ch/site/e.html))*