

Swiss Competition Report

Reporting Period: April 04 – June 04

This section reviews developments concerning the Federal Act of October 6, 1995 on Cartels and Other Restraints of Competition (the “Competition Act”), which is enforced by the Federal Competition Commission (“FCC”). Appeals against decisions of the FCC are heard by the Appeal Commission for Competition Matters (the “Appeal Commission”).

Legislative developments

Amendment to the Competition Act

The amendment to the Competition Act entered into force on April 1, 2004. It introduced two major changes in Swiss Competition law. First, from that date on, the FCC is entitled to impose direct sanctions (fines up to 10 % of turnover in Switzerland over the last three financial years) on undertakings that participate in "hardcore" vertical or horizontal cartels or abuse their dominant position. Such fines sanction (i) horizontal agreements providing for price-fixing, market sharing or quantity restrictions that eliminate or significantly reduce competition without economic justification, and (ii) vertical agreements providing for price-fixing or territorial exclusivity with prohibition of passive sales that eliminate or significantly reduce competition without economic justification. In order to mitigate the consequences of this change, undertakings are offered the possibility to avoid fines until March 31, 2005, either by notifying the FCC of a restriction in which they participate, or by terminating the restriction. The second change consists in the fact that the Competition Act now applies to any restriction to parallel imports, irrespective of whether such restriction is based on intellectual property. (See 2004/1 Report)

Banking Industry

The form used to notify concentrations in the bank industry was modified in order to comply with the new Article 9 III of the amended Competition Act. Pursuant to this provision, the gross revenue (and no longer the sum of the balance sheet) is relevant to determine the thresholds for the notification of concentrations of banks and other financial intermediaries subject to the Federal Act on Banks and Savings Banks of November 8, 1934. The amended notification form contains some details regarding the calculation of gross revenue. The amended notification form is available online on the FCC's website.

Books

Independent booksellers in the French-speaking part of Switzerland engaged into a political action aiming at the introduction of a federal piece of legislation regulating books prices in Switzerland. The issue of a retail price maintenance system on the Swiss book market has been highly controversial for several years. In 1999, the FCC prohibited a retail price maintenance system applied in the German-language book industry (see 1999/3 report). This decision of the FCC was confirmed by the Appeal Commission in 2001 (see 2001/2 report). The Swiss Association of Booksellers and Publishers and the *Börsenverein des Deutschen Buchhandels* filed an appeal before the Swiss Supreme Court against the decision

of the Appeal Commission. The enforcement of the decision of the Appeal Commission has been stayed pending the Supreme Court's decision on the merits (see 2001/3 report).