

Reporting Period : January 00 - March 00

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Amendment to Competition Act** Under the Competition Act, fines may not be imposed for anti-competitive practices, except when the undertakings concerned do not comply with a first binding decision of the FCC. The Swiss Parliament has found this situation unsatisfactory and has commissioned the Secretariat of the FCC and experts to submit proposals with a view to amending the Competition Act. It is most likely that the proposals will include the possibility to impose fines in case of horizontal cartels. The proposals should be issued in the first half of 2000. Then, the Swiss Federal Council will ask a special committee to submit a first draft amendment. A final draft should be submitted to the Parliament in the course of 2001 and the amendment should be enacted in 2002. Note that this amendment of the Competition Act has been prompted by the investigation against the vitamins cartel as the FCC was not in a position to fine Roche, a company headquartered in Switzerland (see below).
- **Annual Report** The FCC has published its annual report for 1999. Thirty-three concentrations were notified, all of which were cleared during the first stage investigation and twenty-three investigations were launched for anti-competitive practices. The FCC confirmed its desire to concentrate on horizontal cartels and restrictions of competition resulting from state interventions.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **Travel Agencies** While reviewing the acquisition by TUI (Suisse) AG of 98% of the share capital and the votes in ITV (Imholz – Tui - Vögele) Reisen AG and of 99% of Imholz Vertriebs AG (see 1999/4 report), the FCC opened on September 3, 1999 an investigation into former transactions between the parties for failure to notify the FCC.

The investigation was closed on December 6, 1999, as the FCC considered that the previous transactions under review needed not be notified and that there was therefore no violation of the merger control provisions of the Competition Act.

Anti-Competitive Practices

- **Asphalt** On January 13, 2000, the FCC has opened an investigation against eight Geneva companies and a professional association which control 80% of the local market of asphalt and waterproofness material used in the construction field.
- **Books** An appeal has been brought before the Appeal Commission against the September 6 FCC's decision prohibiting the retail price maintenance system applied in the German language book industry (see 1999/3 report).
- **Cable Network** The Appeal Commission has set aside the interim measures ordered by the FCC against Cablecom on June 21, 1999 (see 1999/2 report). Cablecom had refused

to allow TeleClub SA to replace analogue decoders by digital decoders. Following the decision of the Appeal Commission, the Federal administration has, however, prevented TeleClub SA from installing its own decoders.

- **Central Heating Maintenance and Repair Services** The FCC has closed the investigation in the matter Clima Suisse on the central heating maintenance and repair services market. The FCC had previously ruled in its "fuel oil burners and gas burners" ruling that the annual price lists issued by the installers' associations for time and materials, subscription prices and other after-sales services constituted unlawful price agreements under the Competition Act (see 1998/4 report). The FCC prohibited application of the lists and directed the associations to so inform their members and the public (ibidem). The Appeal Commission has partially admitted an appeal filed by Clima Suisse against the decision of the FCC. The Appeal Commission ruled that the factual background had changed since the decision of the FCC as Clima Suisse had become the only installer association which maintained a price list. As a result of the decision of the Appeal Commission, the FCC had decided to close the investigation against Clima Suisse.
- **Construction** On January 17, 2000, the FCC has opened an investigation against four bernese construction companies, namely Betosan SA, Isotech SA, Renesco SA and Weiss + Appetito SA in connection with the public tender for works at the Swiss Federal Library (Bibliothèque nationale suisse) in Bern.
- **Electricity** The FCC has closed on February 8, 2000 its investigation against BKW FMB Energie AG for refusal to transport electricity (see 1999/3 report). The FCC ruled that the investigation had no more object as the plaintiff had agreed in the meanwhile to continue to buy from BKW FMB Energie AG, in particular further to price discounts it obtained during the FCC investigation.
- **Motor Vehicle Insurance** On January 26, 2000, the FCC has opened an investigation in the area of civil liability insurance for motor cars in connection with premium increase as of January 1, 2000. The FCC noted that the main insurance companies in this area had all raised their premium at the same time and in similar proportions.
- **Railway** The FCC has opened on February 23, 2000 an investigation against the Swiss Federal Railway for potential abuse of a dominant position.

Lokoop AG, a company transporting boxes for the Swiss Post Office wanted to outsource some of its services to the Swiss Federal Railway, in particular some handling in railway stations. The offer made by the Swiss Federal Railway was a wider package offer, prohibiting Lokoop AG from performing some of the services itself or through another company. The Secretariat of the FCC considered that they were indications of a potential infringement of the Competition Act.

- **Vitamins Cartel** The FCC has completed the investigation launched on June 21, 1999 against Roche SA, BASF and Rhône Poulenc SA. As did the U.S. authorities, the FCC charged the undertakings with conspiring to fix prices and allocate the sales volume of certain vitamins. In a statement appended to the decision, the undertakings concerned have recognized the charges and have undertaken not to repeat their anti-competitive

practices. This decision would enable the FCC to impose fines if the undertakings are found to breach their commitment in the future.