

Reporting Period : January 01 – March 01

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Annual Report of the FCC** On February 16, the FCC published its annual report. The FCC during the year 2000 focused on combatting hard-core cartels rooted in price-fixing, geographical market sharing and quantity restriction agreements, as well as on acting to repress abuses of dominant position. Seven investigations were opened and six closed concerning price-fixing agreements and five were opened and three closed concerning abuses of dominant position. Charged with analyzing regulations implementing competition policy, the FCC and its Secretariat devoted attention throughout the year to the electricity and health-care markets. The FCC recommended to the Swiss Federal Council that health insurers should be required to reimburse policy-holders for medicine procured at lower cost abroad.
- **Competition Act** The Swiss Federal Council wishes to toughen the Competition Act by allowing the FCC to impose direct administrative fines on parties to a hard-core cartel (see 2000/1, 2000/3 and 2000/4 reports). Proposed is a fine that can reach up to 10% of a company's last three annual turnovers. Also foreseen is a so-called "bonus" system mitigating sanctions on undertakings that denounce themselves or collaborate in breaking up a cartel. Introduction of sanctions, the constitutionality of which has been questioned, is opposed by management and labor and some political circles.
- **Electricity Act** The Electricity Act requires providers to grant access to their facilities to all producers. Customers will, depending on their annual consumption, enjoy the freedom of choosing their provider within the six-year period following the Act's entry into force. The Act calls for creation of a new arbitral commission to decide disputes concerning transit of electricity and indemnification. A popular vote in December 2001 on a projected referendum opposing the Act may be required, in which event the Act if accepted by the Swiss electorate will not come into force before the end of next year at the earliest. The FCC remains the competent authority in the meantime regarding electricity issues.
- **Internal Market Act** Examining Geneva, Fribourg, Neuchâtel and Tessin cantonal laws, the FCC found certain conditions that, contrary to the Internal Market Act, hindered the free movement of architects and engineers. Required for market access were in particular : cantonal registration; some years of practical experience for holders of a federal or cantonal diploma; cantonal domicile; payment of professional fees. On January 29, 2001, the FCC adopted under Art. 8 (2) of the Internal Market Act recommendations inviting these cantons to abolish the conditions incompatible with the Act.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Anti-Competitive Practices

- **Asphalt** Following the FCC Secretariat's finding in a retail price maintenance investigation opened in January (see 2000/1 report) that publication by CGE, a Geneva-

based trade association in the asphalt and waterproofing materials market, of price lists and their application by CGE members constituted a cartel, the FCC approved in March an accord entered into amicably with the FCC Secretariat whereby CGE and its members undertook to cease this practice. An amicable accord is an instrument enabling the competition authorities to close proceedings more rapidly and at less cost when investigated parties collaborate and agree to desist from a practice deemed by the Secretariat to be illicit.

- **Electricity** In March, the FCC ruled that refusal by EEF (Entreprises Electriques Fribourgeoises) to allow Watt Suisse AG to use EEF lines to supply electricity to certain outlets of Fédération des Coopératives Migros (see 2000/2 and 2000/3 reports) was an abuse of EEF's dominant position in violation of the Competition Act. EEF and Watt Suisse AG must now agree on transit terms, including technical points and price. If EEF imposes disproportionate terms impeding transit, the FCC will proceed further. EEF intends to seek review of the FCC ruling. The FCC has also opened an investigation concerning refusal by Elektra Baselland and by Service Intercommunal d'Electricité de Renens to allow Watt Suisse AG electricity to transit their lines.
- **Telecommunications** In a dispute between Swisscom and diAx, the Federal Communications Commission preliminarily ordered a partial opening of Swisscom's last mile in favor of diAx. Holding that imposition on Swisscom of a preliminary opening pending the Commission's final ruling on the merits could unnecessarily disadvantage and result in greater risk for Swisscom than for diAx, the Swiss Supreme Court in a March decision on Swisscom's application for review vacated the Commission's order.