

## **Reporting Period : January 03 – March 03**

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

***Annual Report of the FCC.*** On February 4, 2003, the FCC held its annual press conference and published its annual report. During the year 2002, the FCC focused on combatting vertical agreements as well as on repressing anti-competitive practices in the financial sector. On February 18, 2002, the FCC had published a Communication on the assessment of vertical agreements, setting out the conditions under which certain vertical agreements will be considered compatible or not with the Competition Act. As a result of the publication of this Communication, more than hundred complaints have been filed, six of which have led the FCC to open a preliminary investigation. On October 21, 2002, the FCC also published a Communication on vertical agreements in the field of motor vehicle distribution, which aims at improving intra-brand competition and stimulating competition in the market of new motor vehicles, spare parts and after-sales services. Over the year 2002, interim measures, by means of which undertakings can be forced to change their behavior immediately, have particularly gained in importance. The FCC closed four investigations, two of which ended with an amicable settlement. It has been served with 42 notifications of concentration, 38 of which have been cleared during the preliminary investigation.

*(FCC Annual Report 2002, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))*

***FCC Appointments.*** Professor Roland von Büren, Chairman of the FCC, has resigned effective December 31, 2002. This resignation has triggered a number of new appointments. Professor Walter Stoffel, a former Vice-Chairman of the FCC, has been appointed Chairman of the FCC, effective January 1, 2003. He will be in charge of the infrastructure and media division of the FCC. Professor Yves Flückiger, former member of the FCC, has been appointed Vice-Chairman, effective January 1, 2003, and will be responsible for the product markets division. Professor Roger Zäch will remain Vice-Chairman and head of the services markets division.

***Exhaustion of Patent Rights – Opinion of the FCC.*** The FCC adopted a position in March 2003 with regard to the results of a study, ordered by the Swiss Federal Council, according to which the introduction into Swiss law of the principle of international exhaustion of patent rights should have minor effects on the Swiss market. The FCC considered that, contrary to the study, the application of said principle may favour parallel imports and reduce the partitioning of the Swiss market.

*(FCC press release, March 7, 2003, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))*

***Annual Report of the Price Supervisor ("Surveillant des prix").*** In February 2003, the Price Supervisor published its annual report for the year 2002. During the course of 2002, the Price Supervisor focused on network infrastructures (electricity market, cable and TV networks) and the health sector. The Price Supervisor reached three settlements with undertakings imposing abusive prices and issued forty recommendations to various authorities.

*([www.monsieur-prix.admin.ch](http://www.monsieur-prix.admin.ch))*

## ADMINISTRATIVE AND JUDICIAL DECISIONS

### *Merger Control*

- ***Supermarkets***

On February 3, 2003, the FCC decided to conduct an in-depth investigation of the acquisition of Waro by Coop. The preliminary investigation revealed signs that the acquisition might strengthen the dominant position of Coop in certain supply markets, in particular in the market of fresh food supply. The FCC also held that the acquisition might create or strengthen the dominant position of Coop in the distribution market (at local or national level), in particular by enhancing barriers to entry into the market of new competitors.

*(FCC press release, February 6, 2003, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))*

### *Anti-Competitive Practices*

- ***Driving Schools***

On January 6, 2003, the FCC charged the members of the Association of Driving Instructors of the Canton Graubünden and Liechtenstein with breaching the Competition Act in that – although the Association had not recommended official tariffs since 1998 – they had continued to apply the old recommended prices. According to the FCC, such a behavior amounted to a concerted practice and, as its object was the price of driving lessons, to an unlawful price-fixing agreement. The FCC had indicated in the past that it would review any similar recommended tariffs, which restrict competition between driving instructors.

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

- ***Health Insurance***

On March 27, 2003, the FCC opened an investigation against the members of Santésuisse, an association of health insurance companies. The investigation is to show whether these members are in breach of the Competition Act in that they have entered into an agreement with a provider of products to help with incontinence. Pursuant to the agreement, the insurance companies will reimburse only the products of the provider in question at a predetermined price.

*(FCC, press release, March 28, 2003, [wettbewerbskommission.ch/site/e.html](http://wettbewerbskommission.ch/site/e.html))*