

Swiss Competition Report

Reporting Period: January 04 – March 04

This section reviews the main 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”).

Policy and Procedure

Amendment to the Competition Act / Annual Report of the FCC

On March 30, 2004, the FCC held its annual press conference and published its annual report. The main topic of the press conference was the coming into force on April 1, 2004 of the amendment to the Competition Act. The amended Competition Act entitles the FCC to impose direct sanctions (fines up to 10 % of the turnover in Switzerland over the last three financial years) on undertakings that participate in "hardcore" vertical or horizontal cartels or abuse their dominant position. Fines sanction (i) horizontal agreements providing for price-fixing, market sharing or quantity restrictions which eliminate or significantly reduce competition without economic justification, and (ii) vertical agreements providing for price-fixing or territorial exclusivity with prohibition of passive sales which eliminate or significantly reduce competition without economic justification. The undertakings are offered until March 31, 2005, a possibility to avoid fines by either notifying the FCC of a restriction in which they participate or terminating the restriction. Another significant change brought by the amendment is the application of the Competition Act to any restriction to parallel imports irrespective of whether such restriction is based on intellectual property.

Merger Control

Newspapers

On January 19, 2004, the FCC prohibited the purchase by Berner Zeitung of a 17,5 % shareholding in the share capital of 20 Minuten (Suisse) AG, which is one of the main competitors of Berner Zeitung in the Bern area. After a four-month investigation, the FCC concluded that such purchase would create a dominant position of Groupe Espace Media (to which Berner Zeitung belongs) on the markets of readers and advertising in the Bern area. The shareholding of 17,5 % and the shareholders' agreement would have given Berner Zeitung a veto right on important decisions concerning 20 Minuten (Suisse) AG. New entries on the market were considered unlikely because of the important investments required.

On January 19, 2004, the FCC authorized, with charges, the purchase by Groupe Espace Media of a 40 % shareholding in the share capital of Bund Verlag AG. The decision was justified by the financial difficulties of Bund Verlag AG. The FCC conditioned the authorization on the sale of Radig AG, a subsidiary of Bund Verlag AG, to a third party independent from Groupe Espace Media. The sale of Radig AG, which operates Radio BE1, would prevent a dominant position of Groupe Espace Media on the local radio advertising market.

Horizontal Agreements

Social Security

On March 24, 2004, the FCC closed the preliminary investigation it had opened in November 2003 in the field of old-age insurance after four insurance companies announced the same new conversion rate. The FCC found that there were no sign of an illegal agreement among insurers. It was observed that the conversion rates were largely defined by biometrical factors and did not significantly affect competition. The criteria ensuring competition on the market are the premiums and the fees.

Abuse of market power

Telecommunications

On February 16, 2004, the FCC opened two investigations against Swisscom. The first investigation relates to the package "Talk & Surf" that includes the phone connection, ADSL connection and additional services at a reduced price. With this package, one monthly bill only is sent to customers. Swisscom's refusal that other telecommunications providers directly resell the phone connection might constitute an abuse of dominant position. As a result of such refusal, other providers cannot offer a similar package and in particular a single monthly bill for all services. The second investigation regards the rates charged by Swisscom Mobile to business customers for the link between the fixed and mobile networks. The prices charged are lower than those charged to other providers. Consequently, such providers are not in the position to submit competitive offers to their clients.