

Reporting Period : July 00 - September 00

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Proposed Amendment to Competition Act** The Swiss Federal Council has commissioned the Federal Department for Economy to submit a proposal with a view to amending the Competition Act as follows : (i) The FCC should be entitled to impose fines in case of horizontal cartels (price fixing, customers or markets sharing) and abuses of dominant positions (see also 2000/2 report). The undertakings would have the possibility to disclose an anticompetitive practice before its taking effect so as to avoid any fines. Further, the FCC would be entitled not to impose fines if an undertaking collaborates with the FCC in bringing the cartel to light. (ii) The specific thresholds provided by the Competition Act for the media sector should be removed. Article 9 (2) of the Competition Act provides that a concentration in the media sector is reportable if the turnovers of the undertakings concerned reach as low as 1/20 of the "normal" thresholds applicable to other industries. If the proposal is adopted concentrations in the media sector would be subject to "normal" thresholds. (iii) The issues raised by the interaction between intellectual property rights and competition concerns should be addressed. It may be recalled that in a recent decision the Swiss Supreme Court ruled that the holder of a patent right may block parallel imports (see 2000/2 report).

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **Energy Supply** The FCC cleared the merger between VEBA AG and VIAG AG. The FCC found that the merger would not produce overlaps except in the production of cyanuchlorid. Such overlap was not, however, sufficient to create or strengthen a dominant position because of the strong position of competitors, the overcapacity of the industry and the fall in prices over the past years.

The FCC cleared the creation of Rätia Energie AG, a joint venture set up by Aare Tessin AG, Elektrizitäts-Gesellschaft Laufenburg AG, the Canton of Graubünden, Aktiva der Kraftwerke Brusio AG, Rhätischen Werke für Elektrizitäts AG and AG Bündner Kraftwerke. In its decision, the FCC addressed two important issues. First, the FCC held that an individual or a public entity is to be treated as an undertaking for merger control purposes as soon as such individual or public entity has control over an undertaking. Second, the FCC held that ancillary restraints benefit from a clearance of the concentration only where they were directly related to the concentration and necessary to the implementation of the concentration. As the Competition Act does not contain any provisions as regards ancillary restrictions, the FCC has retaken the concept of ancillary restrictions as it is known under the E.U. Regulation.

- **Formula One World Championship** The FCC cleared the acquisition by EM-TV & Merchandising AG of 50% in SLEC Holding Ltd., which remained jointly controlled by Bambino Holding Ltd. SLEC Holding Ltd. is involved through two subsidiaries, Formula One Administration Ltd. and Formula One Management Ltd. in the organization, commercialization and televising of the FIA Formula One Championship.

The FCC found that the concentration would not produce overlaps in the relevant markets.

- **Newspapers** The FCC cleared the creation of Südostschweiz Pressevertrieb AG, a joint venture set up for the morning delivery of newspapers by Südostschweiz Presse AG and ZUVO Zustell- und Vertriebsorganisation AG. Südostschweiz Presse AG is controlled by Gasser Medien AG, and ZUVO Zustell- und Vertriebsorganisation AG is jointly controlled by Neue Zürcher Zeitung AG and TA-Media AG.

On August 21, 2000, the FCC cleared the acquisition by Berner Zeitung of Berner Oberland Medien SA.

- **Oil and Petrochemicals** The FCC cleared the merger between TotalFina and Elf Aquitaine. The FCC confirmed that the Swiss market would indirectly benefit from the undertakings given by TotalFina to the E.U. Commission and did not further investigate the markets in which the concentration would produce overlaps.
- **Radio Broadcasting** The FCC cleared the acquisition of joint control over Radio RI AG by St. Galler Tagblatt AG and Medien Z Holding AG. Whilst the two shareholders were minority shareholders (with 35% each) they were able to exercise a decisive influence on Radio RI AG's strategic decisions through a shareholders' agreement.

Anti-Competitive Practices

- **Electricity** On August 7, 2000, the FCC opened an investigation against Elektra Baselland Liestal (EBL) for not allowing Watt Suisse AG to use EBL's facilities to provide electricity to Mifa AG, a subsidiary of the Fédération des Coopératives Migros. EBL having a *de facto* monopoly, its refusal to give access to essential facilities might constitute an abuse of dominant position.

Similarly, on September 7, 2000, the FCC opened an investigation against the Service intercommunal d'électricité de Renens ("SIE") for not allowing Watt Suisse AG to use SIE's infrastructure to provide electricity to Jowa AG, a subsidiary of the Fédération des Coopératives Migros.

Finding of an abuse would ensure the obligation on holders of essential facilities to transport electricity before the entry into force of the new Act on liberalization of the electricity market, which contains such an obligation.

- **Newspapers' Delivery** On August 21, 2000, the FCC made a recommendation to the Federal Council to put an end to La Poste's fidelity rebates practice. La Poste grants from 5 to 10 ct. rebates on newspapers' distribution to publishers who entrust La Poste and/or two companies controlled by La Poste, Epsilon SA and Bevo AG, with more than half of their delivery business. Whilst fidelity rebates are granted to any publisher on the same conditions, the FCC found that such rebates affect competition. Although the FCC's recommendation is not binding on the Federal Council, it might be taken into account in the review in progress of the regulation on postal services.