

Reporting Period : July 01 – September 01

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Competition Act** A potential difficulty as regards the planned revision of the Competition Act (see 2001/1 report) was removed in August. The Swiss Federal Department of Finance published the results of a study by an expert, concluding that the imposition of direct sanctions was compatible with the Swiss constitution. At present, the FCC can only impose sanctions in case of violation of a first decision, which reduces the effectiveness of competition policy.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **Aeronautics** On March 20, 2001, the FCC had decided, based on its preliminary investigation, to conduct an in-depth investigation of the merger of General Electric ("GE") and Honeywell. However, following the EU Commission's decision to prohibit the merger, GE and Honeywell officially withdrew, on July 11, 2001, the notification filed with the FCC. Accordingly, the FCC closed the investigation procedure. The preliminary investigation conducted by the FCC had revealed signs that the merger could create a dominant position in the production of airplane components in Switzerland.
- **Media** On September 24, 2001, the FCC decided to conduct an in-depth investigation of the takeover of Belcom Holding (Radio 24, TeleZüri, Tele24) by Tamedia AG. The preliminary investigation indeed revealed signs that the acquisition might lead to a dominant position, in particular in the market of radio advertising in the Zurich area. Tamedia AG had offered, right at the start, to sell certain shares it owned in other companies. Accordingly, the FCC authorized, on October 1, 2001, the takeover, provided that Tamedia AG sells the shares it owns in Radio Zürisee (see 1999/4 report). With the sale of Radio Zürisee, advertisers will have as many possibilities as before the merger. Further, the existence of other radio stations and other advertising media will, on the whole, provide for sufficient competition.
- **The FCC further cleared the following transactions** The concentration by which Shell Erneuerbare Energien AG, a holding company within the Royal Dutch Shell group, acquires joint control over Siemens Solar GmbH (SSG), previously controlled by Siemens Aktiengesellschaft and E.ON Energie AG.
 - The merger of the Swiss subsidiaries of Landesbank Hessen-Thüringen Girozentrale, Frankfurt and of Bayerische Landesbank Girozentrale, München.
 - Subject to certain conditions, the merger of Glaxo Wellcome PLC and SmithKline Beecham PLC. The merging companies agreed, inter alia, to license, in

Switzerland, either Glaxo Wellcome's or SmithKline Beecham's antiviral products (exclusive of HIV).

- The acquisition by Compass Group PLC, Chertsey, Surrey (UK), of Selecta Group Zug. Both companies are active in food and beverage services.
- The merger between DG BANK Deutsche Genossenschaftsbank AG, Frankfurt a.M. and GZ-Bank AG, Frankfurt/Stuttgart, Frankfurt a.M.
- The merger between Allianz AG and Dresdner Bank AG.
- The acquisition by Ringier Print Holding AG of sole control over Druckerei Winterthur dw AG and ColorServ AG.
- The creation of a joint venture of Irish law and of two subsidiaries thereof, set up by Raytheon Company, an American company active in the field of defense and commercial technology, and Thomson-CSF.
- The acquisition by Bertelsmann AG Deutschland of sole control over RTL Group Luxembourg.
- The acquisition by the French newspaper "Le Monde" of 20 % of the share capital held by the Sandoz Foundation in the publishing company Le Temps SA.

Anti-Competitive Practices

- **Advertising material delivery** La Poste, two subsidiaries thereof, Direct Mail Company and Epsilon SA, and the distribution organization Swiss Mail have informed the FCC that they intend to collaborate in the field of advertising material delivery. The preliminary investigation conducted by the Secretariat of the FCC revealed signs of an unlawful agreement within the meaning of Article 5 of the Swiss Competition Act.
- **Books** The Swiss Association of Booksellers and Publishers and the *Börsenverein des Deutschen Buchhandels* have appealed before the Swiss Supreme Court against the decision of the Appeals Commission for Competition Matters confirming the prohibition imposed by the FCC to apply a retail price maintenance system in the German-language book industry in Switzerland (see 2001/2 report). The Swiss Supreme Court ruled that the enforcement of the decision be suspended until it decided on the merits of the appeal. The Supreme Court indeed considered that the outcome of the case was uncertain and that the immediate enforcement of the decision would lead to quasi-irreversible disruptions.
- **Cable Network** The Swiss Federal Council dismissed Teleclub SA's appeal against the decision of the Federal Department of Environment, Transport, Energy and Communications requiring Teleclub SA to replace its "d-box" with a "set-top-box" equipped with a common interface. The Swiss Federal Council considered that the use of the "d-box" technology would endanger the diversity of offers and opinions and would compromise the television's integration mission. Authorizing the "d-box" technology would imply that, in order for Teleclub SA's subscribers to get programmes

in other languages, other broadcasters would have to enter into a license agreement with Betaresearch, the holder of the rights pertaining to the concerned technology. This decision is in conformity with the opinion of the EU Parliament, proposing, in the draft directive on the legal protection of the diversity of media in the field of numeric television, to oblige broadcasters to use common interfaces.

As a result of this decision, the FCC closed the investigation against Cablecom, which it was conducting after a complaint had been lodged by Teleclub SA. The FCC considered that the subject-matter no longer existed.

- **Distribution of Watches** On September 3, 2001, the FCC approved the amicable settlement reached with the retailers and suppliers of watches. The retailers and suppliers have accepted to abolish the price indications concerning the gross profit margin (see 1999/3 report).
- **Electricity** On September 3, 2001, the FCC closed its investigation concerning the refusal by Service intercommunal de l'électricité, Renens ("SIE") to allow Watt Suisse AG ("Watt") electricity to transit through its lines (see 2000/3 and 2001/1 reports). In September 2000, the FCC had opened an investigation against SIE for not allowing Watt to use SIE's infrastructure to provide electricity to three sites of the Fédération des Coopératives Migros ("Migros"). As an agreement could be reached with respect to the majority of the sites involved, Migros and Watt have accepted that the procedure be discontinued. The FCC has closed the procedure, considering that as a result of the agreement most of the restraints of competition had disappeared.
- **Elevators** On June 10, 1999, the Secretariat of the FCC had opened a preliminary investigation to examine whether there were signs of unlawful restraints of competition in the field of elevator production. The investigation showed that there was sufficient competition between the main companies, both in the field of elevator installation and in aftersales service. The Secretariat of the FCC therefore closed the proceedings.
- **Telecommunications** Tele2 Telecommunication Services ("Tele2") has filed a complaint with the FCC against Swisscom for abuse of dominant position with respect to the "last mile". Tele2 requested the FCC, inter alia, to take following measures: prohibit Swisscom to enclose with the invoices that it mails to Tele2's clients advertising for its own services; prohibit Swisscom to use for other purposes customers' data concerning the base tax; compel Swisscom to offer certain services, which other operators cannot offer for technical reasons (e.g. "ISDN-Combi"), to the public at large and not only to its own customers as at present. For the time being, Swisscom still enjoys the monopoly on the "last mile" (see 2001/1 report).