

Reporting Period : July 97 - September 97

Enforcement Policy and Legislative Developments

There were no significant developments during the reporting period.

Administrative and Judicial Decisions

MERGER CONTROL

- **Animal Health and Poultry Genetics**

On August 18, the FCC cleared the formation of Merial, a concentrative joint venture between Rhône-Poulenc SA and Merck and Co., Inc. The Merial case is one of the first "foreign concentrations" examined by the FCC under the Competition Act. Although there were no overlaps in the relevant markets and although the transaction had already been cleared by the European Commission, the FCC adopted a very formalistic approach regarding the content of the notification (apparently on the grounds that no policy had yet been decided concerning short-form notifications). With respect to the extraterritorial reach of Swiss competition rules, the FCC made clear that Swiss rules apply as soon as the required thresholds are met, irrespective of whether the parties have a presence in Switzerland in the relevant markets. The FCC decided to open an in-depth investigation to determine whether the parties contravened the Competition Act's prohibition against implementing the transaction prior to approval under the Act. An affirmative finding in this regard would be significant since, in the case at issue, there was no aspect of the transaction to be implemented in Switzerland.

- **Banking**

The FCC cleared the acquisition by Valiant Holding AG of Bank in Langnau, a local bank. Valiant Holding AG is the company that resulted from the concentration between Spahr + Leihkasse, Gewerbekasse and BB Bank Belp.

- **Banking and Leasing**

The FCC cleared the acquisition by General Electric Capital Corporation, a U.S. subsidiary of General Electric, of Bank Aufina AG and its subsidiary Unileasing AG. The target company was owned by UBS.

- **Electrical Supplies**

The FCC decided to open an in-depth investigation of the acquisition by Siemens AG, a German company, of Elektrowatt AG. Elektrowatt AG controls, *inter alia*, Landis and Gyr Utilities and Landis and Gyr Communications. In its preliminary, the FCC's Secretariat found that the merged entity would have high shares in certain relevant markets.

- **Newspapers**

On August 18, the FCC decided to open an in-depth investigation of the formation of a concentrative joint-venture by Le Nouveau Quotidien ERL SA and La Société du Journal de Genève et de la Gazette de Lausanne. The transaction would merge two daily newspapers ("Le Journal de Genève et Gazette de Lausanne" and "Le Nouveau Quotidien") into a new daily newspaper ("Le Temps"). Le Nouveau Quotidien ERL SA

is controlled by the Edipresse Group, one of the largest printing and publishing groups in Switzerland. The Edipresse Group publishes, *inter alia*, Le Matin, La Tribune de Genève and 24 Heures (Feuille Officielle Suisse du Commerce, August 21, 1997 N° 159).

ANTI-COMPETITIVE PRACTICES

- **Access to the Internet**

Following an in-depth investigation, the FCC found that the Telecom-PTT had abused its dominant position by establishing a provider ("Blue Window") that offered access to the Internet through a particular phone number at the local-call tariff irrespective of the user's location in Switzerland. This particular phone number was not made available simultaneously to all Internet providers under the same conditions. The FCC's decision confirms the injunction issued by the FCC against Telecom-PTT at the end of 1996. The FCC also found that Telecom-PTT used the income of the reserved areas to cross-subsidize its Internet provider. (Recht und Politik des Wettbewerbs 1997/2, p. 161).