

## **Reporting Period : July 02 – September 02**

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

*Motor Vehicle Distribution – Communication of the FCC.* On October 21, 2002, the FCC published a communication on motor vehicle distribution. This communication is intended to supersede the FCC's communication of February 18, 2002 on the appreciation of vertical agreements as to the following main aspects :

- Agreements will be considered unlawful if their object is the restriction of the distributor's or repairer's ability to fix the price of resale, without prejudice to the supplier's ability, on certain conditions, to impose a maximum price of resale or to recommend a price of resale.
- As regards sales of new motor vehicles within an exclusive distribution system, vertical agreements will be considered unlawful if they have as their object (i) the restriction of the ability of end users residing in Switzerland or independent resellers in Switzerland to purchase motor vehicles from an authorised distributor operating in Switzerland or in the European Economic Area ("EEA"), or (ii) the restriction of the ability of members of an exclusive distribution system in Switzerland to sell motor vehicles to end users or independent resellers in the EEA.
- As to sales within a selective distribution system, vertical agreements will be considered unlawful if their object is (i) the restriction of the ability of end users residing in Switzerland, or of members of a selective distribution system in Switzerland, or of Swiss resellers acting as agents for an end user residing in Switzerland, to purchase motor vehicles from any authorised distributor operating in Switzerland or the EEA, (ii) the restriction of the ability of members of a selective distribution system in Switzerland to sell motor vehicles to end users residing in the EEA, authorised distributors in the EEA or resellers acting as agent for end users residing in the EEA, (iii) the restriction of the ability of members of a selective distribution system in Switzerland, or of members of a selective distribution system in the EEA operating at retail level, to actively or passively sell motor vehicles, spare parts for any motor vehicle, or repair and maintenance services for any motor vehicle, to end users residing in Switzerland or in the EEA.
- As to after-sales services, vertical agreements will be considered unlawful if their object is (i) the restriction of the authorised repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts, (ii) the restriction of the distributor's ability to subcontract the provision of repair and maintenance services to authorised repairers, without prejudice to agreements whereby the supplier may require the distributor to provide end users with the name and address of the authorised repairer prior to the conclusion of a sales contract, (iii) the restriction of the ability of members of a selective distribution system to sell spare parts to independent repairers operating in Switzerland or in the EEA and using these parts for the repair and maintenance of a motor vehicle, (iv) the restriction of the ability of a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment, to sell these goods and related services to

authorised or independent distributors or repairers operating in Switzerland or in the EEA, or to end users, (v) the restriction of the distributor's or authorised repairer's ability to obtain in Switzerland or in the EEA original spare parts or spare parts of matching quality from a third party undertaking of its choice, without prejudice to agreements whereby a supplier of new motor vehicles may require the use of original spare parts supplied by it for repairs carried out under warranty, free servicing and vehicle recall work, and (vi) the refusal of a supplier of motor vehicles to give independent operators access to any technical information, diagnostic or other equipment, tools (including any relevant software) or training required for repair and maintenance or for the implementation of environmental protection measures.

The communication on motor vehicle distribution has also introduced new requirements in terms of multi-branding and provides for specific rules for vertical agreements of fixed and indefinite duration. Its principles particularly aim at intensifying intra-brand competition and improving competition in after-sales servicing. They are inspired by the Commission Regulation (EC) N° 1400/2002 of July 31, 2002, on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector. The FCC's communication entered into effect on November 1, 2002.

*(FCC press release, August 22, 2002, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))*

**Competition Act.** The amendment of the Competition Act submitted by the Swiss Federal Council for parliamentary debate on November 7, 2001, has not yet been enacted by the Swiss Parliament. It has only been approved by the National Council on September 26, 2002. The approval by the States Council is expected at the end of 2002. Amongst other modifications, the proposed amendment provides for a system of non-mandatory preliminary notification of potentially unlawful agreements and practices, the power of the FCC to impose direct sanctions on undertakings or the power to reduce or to omit fines when cooperation with hardcore cartel members allows said cartel to be discovered or eliminated, and the removal of particular notification thresholds in the media sector.

## **ADMINISTRATIVE AND JUDICIAL DECISIONS**

### ***Merger Control***

- ***Newspapers***

The FCC cleared the acquisition by the AG für die Neue Zürcher Zeitung, a company controlling the company publishing the Neue Zürcher Zeitung, of 40 % of the capital stock of LZ Medien Holding, a company holding the whole capital stock of the company publishing the Neue Luzerner Zeitung.

- ***Supermarkets***

On August 7, 2002, the FCC cleared the acquisition by Coop of Epa AG, a company running about 100 grocery stores in Switzerland. In the market of food products distribution, the investigation showed that the competition is strong enough to discipline the behaviour of Coop/Epa AG. In the market of food products supply, the FCC held that some suppliers were to a certain extent dependent on

Coop, but that there were no indications that the concentration concerned might create or strengthen a dominant position of Coop.  
(FCC press release, August 8, 2002, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))

- **Cheese**

On September 18, 2002, the FCC cleared the sale of the cheese activities of Swiss Dairy Food to the Emmi group. The FCC took into account all the specific conditions of the Swiss cheese market as well as the progressive opening of the market to the international cheese market resulting from the bilateral agreements between Switzerland and the European Union. The clearance follows the decision of the FCC of August 22, 2002, authorizing in advance the implementation of the concentration because of the serious cash-flow problems of Swiss Dairy Food.  
(FCC, press release, August 22 and September 18, 2002, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))

### ***Anti-Competitive Practices***

- **Motor vehicles**

On August 19, 2002, the FCC approved an amicable settlement with Citroën (Suisse) SA ("Citroën"), obliging Citroën to remove from its distribution and agency agreements two provisions restricting the sale, by European distributors, of new cars to Swiss customers. Citroën also undertook to take all necessary measures to have its distribution system in Switzerland governed by the same principles as those applying in the European Union, provided that the FCC takes into account in its future practice the rules set forth in Commission Regulation (EC) N° 1400/2002 of July 31, 2002, on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector.  
(FCC, press release, August 22, 2002, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))

- **Watches**

As a result of complaints filed by several undertakings, the Secretariat of the FCC decided to open a preliminary investigation against ETA SA Fabrique d'Ebauches ("ETA"), a company of the Swatch group specialized in the production of watch components and watch movements. In July 2002, ETA had announced its decision to limit its supply of movement blanks ("ébauches") as of January 1, 2003, with a total stop at the end of 2005. Later on, ETA would supply (finished) movements only.  
(FCC, press release, October 4, 2002, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))

- **Telephone network**

- On August 27, 2002, the FCC opened a sanctions procedure against Swisscom SA ("Swisscom"). The purpose of the procedure is to clarify if Swisscom has violated the amicable settlement approved by the FCC on May 6, 2002, obliging Swisscom to stop sending advertisements for its own services together with its invoices for the connection fee to customers who have "preselected" another carrier. Since June 2002, Swisscom has been sending again invoices together with advertisements which mentioned a free telephone number, allowing customers who had changed carrier and had opted for Carrier-Preselection to again subscribe to Swisscom. If

this practice is found to be incompatible with the amicable settlement, Swisscom might be fined up to 10 % of its last annual turnover in Switzerland.  
(FCC, press release, August 27, 2002, [wettbewerbskommission.ch/site/e.html](http://wettbewerbskommission.ch/site/e.html))

- On September 23, 2002, the FCC forced Cablecom, by means of interim measures, to immediately broadcast the digital programmes of Teleclub AG ("Teleclub") and to accept the use of the Teleclub's Set-Top-Box. In order to broadcast its digital programmes, Teleclub depends on Cablecom, which runs the biggest cable network in Switzerland. Cablecom broadcasted Teleclub's programmes on the condition, among others, that Teleclub uses the so-called Set-Top-Box Swissfun of Cablecom only. The FCC held that Cablecom might be abusing its dominant position, insofar as it discriminates against competing undertakings in the pay television sector. According to the FCC, such discrimination might have important consequences on the future structure of the pay digital television market, because of the dynamics of the market. There was therefore urgency in ordering the interim measures against Cablecom.

(FCC press release, September 26, 2002, [www.wettbewerbskommission.ch/site/e.html](http://www.wettbewerbskommission.ch/site/e.html))