

Reporting Period : July 03 – September 03

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

Therapeutic Products Act and Competition Act. The FCC issued on September 23rd, 2003, an opinion addressed to the prices Supervisor in favour of the applicability of the Competition Act to the sale of therapeutic products to public hospitals. A preliminary investigation showed that after the entry into force of the Therapeutic Products Act ("TPA"), pharmaceutical companies changed their prices and discounts practice towards public hospitals by either not allowing discounts anymore or uniformly reducing them to a maximum of 20 %. According to the FCC, Article 33 of the TPA aims at preventing acts of corruption but does not generally prohibit discounts on therapeutic products or set a maximum limit to discounts. It follows that Article 33 is not a reserve to the applicability of the Competition Act. Therefore, collusion or agreements among pharmaceutical companies on prices or discounts to public hospitals must comply with the provisions of the Competition Act, respectively of the Prices Supervision Act.

(FCC press release, September 23, 2003, www.wettbewerbskommission.ch/site/e.html)

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- ***Newspapers***

- On July 21st, 2003, the FCC temporarily authorised the company Le Temps SA – company which publishes the daily newspaper Le Temps – to replace its TV supplement by the magazine TV8 published by Ringier. This replacement is part of a concentration plan by which Ringier considers taking joint control with Edipresse of the Company Le Temps SA. This concentration plan was under preliminary investigation by the FCC at the time of this press release. The temporarily authorization results from the consideration by the FCC of the possibility for Le Temps SA to make major savings. It is also an early realisation of a part of the concentration plan.

(FCC press release, July 22, 2003, www.wettbewerbskommission.ch/site/e.html)

- On August 7th, 2003, the FCC opened an in-depth investigation of the concentration of companies that should allow Ringier to increase its participation in Le Temps SA and acquire joint control with Edipresse. The preliminary investigation showed signs that the already dominant position of Edipresse on the newspapers market in the French-speaking Switzerland might be strengthened by an equally represented participation of Ringier in Le Temps SA. At the time of the foundation of the company Le Temps SA in 1997, the FCC authorized it with charges, in particular that the President of the Board of Directors be independent from majority shareholders. In the concentration project submitted to the FCC, Ringier and Edipresse are each 50 % shareholders of the company Nouveau Quotidien SA – a company which is the majority shareholder of Le Temps SA. Therefore after the preliminary investigation, doubts remain as to how the purpose

of this charge will be respected with the new Le Temps SA shareholding composition.

(FCC press release, August 11, 2003, www.wettbewerbskommission.ch/site/e.html)

- On September 11th, 2003, the FCC allowed authorized the partial buy-out of 20 Minuten (Schweiz) AG by Tamedia AG. The participation of Berner Zeitung AG however will be re-investigated due to changes in the situation. Tamedia and Berner Zeitung are considering taking control of 20 Minuten by jointly controlling l'Express Zeitung AG, a company of which Tamedia AG is presently the only shareholder. Berner Zeitung has first to acquire shares in l'Express Zeitung AG and control it jointly with Tamedia. Then l'Express Zeitung AG will acquire control over 20 Minuten. The preliminary investigation showed signs that the control of 20 Minuten by Tamedia and Berner Zeitung might create or strengthen dominant positions on the local or regional advertisement market or the readers market in the Bern and Zurich areas. If signs are not confirmed as to the Zurich area, the situation is different in Bern. L'Espace Media Groupe – mother company of the Berner Zeitung – just bought-out a minority part in its most important competitor – the Bund Verlag AG. This acquisition significantly altered the competitive situation in the Bern area. Therefore, a re-investigation of the concentration plan between Berner Zeitung AG and 20 Minuten AG is necessary. Until the end of this re-investigation, Berner Zeitung AG is prohibited from acquiring any share in l'Express Zeitung AG.

(FCC press release, September 17, 2003, www.wettbewerbskommission.ch/site/e.html)

- On September 29th, 2003, the FCC opened a in-depth investigation of the entry of Espace Media Groupe into the capital of Der Bund Verlag AG. According to an FCC preliminary investigation closed on September 29th, 2003, this entry might create or strengthen a dominant position on the newspaper readers market, the regional advertisements market and the regional advertisement on radio or television market, in the Berner Mittelland area. The newspaper readers market in the Berner Oberland area is concerned as well. Espace Media Groupe already benefits from a strong position in all above-mentioned markets and Der Bund Verlag AG is active in many of these markets as well. However, the preliminary investigation showed that the transaction might be entirely justified by the financial difficulties that Der Bund Verlag AG encounters. The FCC has four months to check whether the concentration actually creates or strengthens a dominant position and whether it can be justified by the financial difficulties of Der Bund Verlag AG.

(FCC press release, September 30, 2003, www.wettbewerbskommission.ch/site/e.html)

Anti-Competitive Practices

- ***Private clinics.*** On August 18th, 2003, the FCC's secretary opened an investigation against the clinics member of the Association of private clinics of Geneva (APCG). In the state of Geneva, the APCG clinics and health insurances entered into an agreement on the charges for services provided to patients in private or semi-private divisions of

the clinics. The preliminary investigation showed that the application of the agreement by both parties might constitute an unlawful agreement within the meaning of the Competition Act.

(FCC press release, August 21, 2003, www.wettbewerbskommission.ch/site/e.html)