

## Reporting Period : October 00 - December 00

### ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Amendment to Competition Act** The proposed amendment to the Competition Act, which provides *inter alia* giving to the FCC the power to impose fines in case of anti-competitive practices (see 2000/1 report), is facing strong opposition from Swiss industrial circles demanding to be represented in the FCC, as well as from organizations on the political left that fear the consequences of a more competitive environment on employment.

### ADMINISTRATIVE AND JUDICIAL DECISIONS

#### *Merger Control*

- **Advertising** On December 27, 2000, the FCC cleared the acquisition of Senger Media AG, a company active in the advertising sector, by Presse Publications SR SA, a company belonging to the Edipresse group. Senger Media AG was controlled by individuals and by the French group Havas.
- **Airport Property** The FCC cleared the acquisition by Avireal AG of the joint control of Airrange AG, a company which was under the sole control of ABB Asea Brown Boveri AG before the acquisition. Airrange AG will be active in the business of managing airport property.
- **Banking** The FCC cleared the acquisition by HSBC Holding Plc of the sole control over Crédit Commercial de France.

The FCC cleared the merger of Dai-Ichi Kangyo Bank Ltd, Fuji Bank Ltd and The Industrial Bank of Japan Ltd. The Swiss subsidiaries of Fuji Bank Ltd and the Industrial Bank of Japan were absorbed by the Swiss subsidiary of Dai-Ichi Kangyo Bank Ltd.

- **Beverages** On November 10, 2000, the FCC confirmed that the acquisition of Feldschlösschen Getränke Holding AG by Carlsberg A/S was not reportable in Switzerland because the thresholds provided by the Competition Act were not met.
- **Floor Products** The FCC cleared the acquisition by Nordic Capital of the joint control over Bauwerk, a company which was under the sole control of HIAG AG before the acquisition. The joint control was achieved through the holding company Nybron Flooring International Corporation. In the same procedure the FCC cleared the acquisition by Nybron Flooring International Corporation of Nybron, a Swedish company.
- **Internet** The FCC cleared the formation of Vizzavi Ltd, a joint venture company established to operate a multi-access internet portal, by Vodafone AirTouch Plc, Vivendi SA and Canal+.

- **Newspapers** The FCC cleared, after a second-stage investigation, the creation of Berner Oberland Medien AG, a joint venture company, by G. Maurer AG and Schaer AG. The FCC also cleared a cooperation, pursuant to a cooperation agreement, between the newly formed joint venture and Berner Zeitung AG. The FCC held that the cooperation agreement together with other factual circumstances gave rise to a "*de facto* concentration" enabling Berner Zeitung AG to exercise a decisive influence on the joint venture's strategic decisions. This was the first time that the FCC defined the concept of "*de facto* concentration".
- **Supermarkets** The FCC cleared the acquisition by Usego Hofer Curti AG, a company belonging to the Bon Appetit Group AG, of the control over Magro SA. Usego Hofer Curti AG was already the majority stockholder of Magro SA, with 78.65% of the voting rights and 53.70% of the capital stock. Usego Hofer Curti AG could not, however, exercise control over Magro SA because of a provision contained in the bylaws which provided that a stockholder could not be listed in the stock ledger beyond a 5% shareholding. The notification to the FCC was triggered by a decision of a meeting of stockholders removing the 5% limit.
- **Telecommunications** On December 18, 2000, the FCC cleared the merger between Sunrise Communications SA and DiAx AG, two major players in the communications industry. The FCC found that the merger did not create a dominant position as Sunrise Communications SA was not active in the mobile telephony sector. Overlaps in market shares were found only in the internet sector. In its decision, the FCC noted that competition was still not sufficient in certain sectors, for example in the last mile market where Swisscom still holds a dominant position and in the mobile telephony sector because of the limited number of licenses available.

The merger between Sunrise Communications SA and DiAx AG was announced the day before the auction for the award of the UMTS licenses. Sunrise Communications SA, which participated in the competitive auction with Swisscom, Orange Communications SA, the 3G group (Telefonica) and dSpeed (a subsidiary of DiAx), withdrew from the auction upon announcement of the merger. As a result, the four available licenses were awarded to the other four participants at tender prices that were considerably lower than the Swiss authorities had expected. The FCC and the Federal Office for Communications have launched an investigation to determine whether the abrupt conclusion of the tender was the result of an anti-competitive practice.

- **Travel Agencies** The FCC cleared the acquisition by Kuoni Reisen Holding AG of a 49% shareholding in TUI (Suisse) AG. TUI (Suisse) AG became a company jointly controlled by Kuoni Reisen Holding AG and TUI Group GmbH.

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

- **Beverages** On November 1, 2000, the FCC opened an investigation against Coca-Cola and Feldschlösschen in connection with an agreement pursuant to which Feldschlösschen agreed to distribute Coca-Cola's soft drinks (Sprite, Fanta and Coca-Cola) through its distribution network. The investigation should determine whether Feldschlösschen, which is the major distributor of soft drinks in Switzerland, discriminates in favor of Coca-Cola's products.

- **Dental supplies** On December 21, 2000, the FCC held that Intensiv SA, a producer of dental supplies, abused its dominant position by refusing to sell its products to resellers by correspondence. The FCC found that the fact that such resellers did not provide technical assistance to buyers was not a legitimate business reason for refusal to sell the products to them.
- **Drugs** On December 18, 2000, the FCC made a proposal to the Swiss Federal Council with a view to amending the Swiss Health Insurance Act. Under the Act, insurance companies are not allowed to reimburse drugs purchased abroad. The proposed amendment, by allowing such reimbursement, should improve competition in the drug industry, because prices in Switzerland are considerably higher than in neighboring countries.