

Reporting Period : October 96 - December 96

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Competition Act**

The Federal Act of October 6, 1995, on Cartels and Other Restraints of Competition (the "Competition Act") entered into force on July 1, 1996. Under the Competition Act, agreements and concerted practices are unlawful whenever they appreciably restrict competition, unless they can be justified on grounds of economic efficiency. Such a justification is not allowed, however, whenever an agreement eliminates competition (*e.g.*, allocation of customers, market sharing). Under the Act, agreements do not need to be notified to the FCC. The FCC may initiate a preliminary investigation *sua sponte*, upon request of the parties, or upon complaint by a third party. If there are signs of an unlawful restriction of competition, the FCC will initiate a full investigation and may take any measure appropriate to restore competition. All decisions rendered by the FCC are subject to appeal to the Appeal Commission. Fines may be imposed on undertakings only upon a finding following a second formal FCC procedure that the undertakings concerned did not comply with a settlement or an initial binding decision of the FCC. The provisions of the Act dealing with abuses of a dominant position are in line with those of Article 86 of the Treaty. Unlawful agreements and abuses of a dominant position may be exceptionally authorized by the Swiss Federal Council when necessary to protect major public interests. (RS 251, Message of the Swiss Federal Council of November 23, 1994, FF 1995 I 472).

- **Regulation on the Control of Concentrations**

The Regulation of June 17, 1996, on the control of concentrations between undertakings entered into force on July 1, 1996 (the "Regulation"). Under the Regulation, concentrations must be notified to the FCC before they are implemented whenever, during the preceding financial year, (i) the aggregate worldwide turnover of the undertakings concerned amounts to at least two billion Swiss Francs or the aggregate turnover of the undertakings within Switzerland amounts to at least five hundred million Swiss Francs, *and* (ii) the aggregate turnover in Switzerland of each of at least two of the undertakings amounts to at least one hundred million Swiss Francs. The proposed concentration is examined in a two-tier procedure upon receipt of the notification. First, the FCC conducts a preliminary investigation to determine whether there is a need to investigate the concentration further; if as a result of the preliminary investigation, it concludes that the concentration may create or strengthen a dominant position, then it will initiate a full investigation. The FCC may prohibit a concentration following a full investigation only if it creates or strengthens a dominant position to a point where it might *eliminate* competition. Swiss law is therefore more favorable to concentrations than EC Law, and the FCC is unlikely to object to a concentration that has already been approved by the EC Commission. A concentration prohibited by the FCC may be exceptionally authorized by the Swiss Federal Council if it is found to be necessary to protect major public interests. (RS 251.4).

- **Postal Services**

The Swiss Federal Council issued a proposal aimed at progressively liberalizing postal services. Under the proposal, the Post must ensure that users enjoy the right to universal service. Such service is divided into services to be rendered exclusively by the Post

("reserved services") and services that may also be offered by competitors ("non-reserved services"). Other services may be offered by the Post ("free services"). The transport and delivery of items of correspondence whose weight is less than 2 kg are reserved services, unless transport of outgoing cross-border mail or direct mail is involved. (FF 1996 III 1201 et seq.).

- **Telecom-PTT**

The Swiss Federal Council issued a proposal on the re-organization of the PTT that envisioned the splitting of the Post and the Telecom and the liberalization of the Telecom. The Telecom would become a public stock company. Under the proposal there would be no infrastructure and services reserved. However, the operators would ensure universal service encompassing a minimum range of quality services at an affordable price. The offering of telecommunication services is subject to the granting of a license by the Federal Office for Communication. (FF 1996 III 1260 et seq., 1361 et seq.).

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

There were no significant developments during the reporting period.

- **Motor Vehicles**

The FCC initiated a preliminary investigation of allegations that some European car manufacturers had prohibited their EC dealers from selling cars to customers domiciled in Switzerland. Although the Competition Act addresses any unlawful restraint of competition that affects the Swiss market, regardless where the undertakings are located, it is questionable whether the FCC is empowered to investigate undertakings located outside Switzerland. In this matter, the FCC send written questions directly to the manufacturers.