

## Reporting Period : October 99 - December 99

### ADMINISTRATIVE AND JUDICIAL DECISIONS

#### *Merger Control*

- **Aluminum industry** On November 8, 1999, the FCC has approved the merger of Alcatel, Pechiney and Algroup, the preliminary investigation having not shown any indications of a dominant position. The FCC indicated that Algroup, the Swiss entity of the new group had sold its chemical and energy business, prior to the merger.
- **Highway catering** The FCC has approved the merger of Bon Appétit Holding and Usego Hofer Curti AG. The FCC relied heavily on its previous analysis of the merger between SSG and Curti (see 1998/2 report) to review said transaction.
- **Logistics** The FCC has approved the creation of ChemOil Logistics AG through SBB AG and the German company Transpetrol GmbH. The FCC has considered that the merger had a complementary character and was not leading to any market overlap. The FCC further considered that the logistic market was a very open market with extensive competition, in particular pursuant to the liberalization of the transport market.
- **Media** The FCC has examined the contemplated acquisition by two private equity funds owned by entities of the Crédit Suisse Group, namely Crédit Suisse First Boston Equity Partners LP and EMA Private Equity Fund 1999 LP, of 40% of the share capital of Belcom Holding AG from Dr. R. Schawinski. Belcom Holding AG is active in the media sector with a 100% shareholding of Radio 24 AG, a 100% shareholding in Tele 24 AG and 50% of the shares (respectively 62.5% of the votes) of Telezüri AG. The FCC has considered that the operation was not creating nor strengthening a dominant position.

It is interesting to note that, in an obiter dictum, the FCC has indicated that it would in principle recognize the so-called "banking clause" of EC law (Article 3 (5) lit. a of the Merger Control Regulation (Regulation 4064/89)) and the so-called "Luxembourg clause" (Article 3 (5) lit. c of the Merger Control Regulation (Regulation 4064/89)), which do not exist in the Competition Act or the Swiss Merger Control Regulation.

- **Media** The FCC ruled that the increase in the shareholding of Belcom Holding AG and TA Media AG in Telezüri AG was not creating nor strengthening a dominant position. Pursuant to the acquisition, Belcom Holding AG owned 50% of the share capital and 62.5% of the votes of Telezüri AG, while TA Media AG owned 50% of the share capital and 37.5% of the votes of said company. Telezüri AG is a local TV offering TV programs in the Zurich area.
- **Oil sector** The FCC has approved the merger of Exxon and Mobil.
- **Pharmaceuticals** The FCC has approved the merger of Hoechst AG and Rhône-Poulenc SA and the creation of Aventis SA. The FCC has considered that no dominant position was created nor strengthened by the merger and that therefore no in depth examination was necessary.

- **Service providers** The FCC has approved the acquisition by Swisscom AG of 58% of the share capital of Debitel AG, a German service provider listed on the Frankfurt Stock Exchange and owned by Debis AG (42.5% of the share capital), Metro Vermögensverwaltungs GmbH (27.8% of the share capital), Divaco Beteiligungs AG (7.9% of the share capital), ElectronicPartner Handel GmbH (2% of the share capital) and the public (19.8% of the share capital). Although Debitel had no activity in Switzerland and therefore no turnover in the country, the acquisition was however subject to notification pursuant to Article 9 (4) of the Competition Act (which provides that a notification is required in all cases involving undertakings which have been determined to have a dominant position in a particular market in Switzerland and the merger relates to this particular market, its upstream or downstream markets) as Swisscom AG had been considered to have a dominant position.
- **Travel agencies** The FCC has approved the acquisition of 98% of the share capital and the votes in ITV (Imholz – Tui – Vögele) Reisen AG as well as the acquisition of 99% of Imholz Vertriebs AG by TUI (Suisse) AG from the Jelmoli Group. According to the FCC, no relevant product and geographical market in which two or more of the undertakings involved jointly hold a market share of 20% or more or in which one of the undertakings involved holds a market share in Switzerland of 30% or more were affected by the merger.

### *Anti-Competitive Practices*

- **Automobile industry** Mowag Motorwagen Fabrik AG has requested an advice from the FCC as to whether it had a duty to notify a divestment in companies active in a market on which, pursuant to the divestment, it would no more be active. The FCC indicated that there was no necessity to notify such divestment.
- **Procedure** In a decision dated July 5, 1999, the Appeal Commission has ruled that a decision of the Competition Commission to order or not to order a hearing in an investigation, pursuant to Article 30 of the Competition Act could in principle not be independently appealed (that is before the final decision is rendered) unless the concerned undertaking was suffering irreparable damages.
- **Procedure** In a decision dated July 8, 1999, the Appeal Commission ruled that, in a case where the Secretariat of the FCC had given to a party a deadline shorter than usual (29 days) for such party to determine itself on a motion made by the Secretariat, the Secretariat should have accepted the party's request for a 30 days extension as the party had good reasons to request such a new deadline.
- **Recycling** The FCC has reviewed the so-called SWICO Recycling Guarantee, namely a guarantee signed by manufacturers and importers of electronic products members of the Schweizerischen Wirtschaftsverbandes der Informations-, Kommunikations- und Organisationstechnik (SWICO). Under the SWICO Recycling Guarantee, the manufacturers and importers of electronic products undertake to take back, sort and dispose of used products covered by the guarantee. The agreement between the members of SWICO provided that they should report the costs generated for the disposal of the products to the end user.

The FCC considered that the SWICO Recycling Guarantee was an horizontal agreement falling within the scope of the Competition Act. The Secretariat considered that there was no unlawful restriction to competition and that the system was justified by economical efficiency grounds.

- **Telecommunications** The FCC examined whether Swisscom, which had been determined to have a dominant position, had abused of such position in the way it is offering leased lines services and transfer media to end users (retail portfolio) and service providers (wholesale portfolio). The FCC considered that pursuant to the liberalization of the telecommunication market, Swisscom, despite keeping a dominant position in the leased lines market, has applied new standard policies for wholesale and retail sale portfolio and a price policy which do not reflect an abuse of a dominant position.