

Reporting Period : October 01 – December 01

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Advertising in the Health Sector.** On November 5, 2001, the FCC urged five Cantons (Aargau, Jura, Neuchâtel, St. Gallen, and Valais) to lift the restrictions imposed on health professions as regards advertising. In the past, the FCC had taken a similar stand with respect to the Cantons of Vaud, Fribourg and Geneva. Taking into account that advertising is an essential factor of competition, the FCC considers that health professionals should be free to advertise within the limits of fair competition.
- **Hardcore cartels.** A consumer protection association provided the FCC with a list of undertakings suspected of fixing prices among them and imposing fixed prices on distributors. Allegedly, price fixing still is a common practice in Switzerland that results in prices being 25 % higher in Switzerland than in neighboring countries. The conclusions of the association, based on an academic report, received extensive press coverage with a view to supporting the amendment of the Competition Act with respect to direct sanctions (see 2001/1 report).
- **Life Insurance.** In the context of the bilateral negotiations between Switzerland and the EU, the FCC issued, on October 1, 2001, a recommendation to the Federal Council in favor of the opening of the life insurance market to foreign competition. Under the present legislation, European life insurance companies cannot operate on the Swiss market at the same conditions as Swiss companies. The FCC considers that competition from foreign life insurance companies would exert a positive pressure on the quality and diversity of the offer, as well as on the premium/services ratio.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **IT.** On November 5, 2001, the FCC cleared the transaction by which Swisscom and AGI IT Services, a computer company jointly held by eight cantonal banks, merged their respective IT activities into a new company controlled by Swisscom, "Swisscom IT Services AG". The FCC considered that the transaction would not create, nor strengthen a dominant position on the various IT markets concerned. The eight cantonal banks would, on the other hand, benefit from the support of an experienced partner and strengthen their position vis-à-vis the main banks.
- **Newspapers.** On October 1, 2001, the FCC cleared the acquisition by Le Monde of 20,24 % of the share capital of Le Temps SA. In this decision, the FCC confirms that a shift from a joint control by two to a joint control by three may give rise to a concentration within the meaning of the Competition Act.

Anti-Competitive Practices

- **Construction.** In its decision of December 17, 2001, the FCC found that four undertakings in Bern (Betosan SA, Isotech SA, Renersco SA, and Weiss et Appetito SA) had breached the Competition Act in that they had concerted with each other for the purpose of the tender relating to the restoration of the national library. The FCC forbade the four companies to enter into similar concerted practices as regards future bids. This was the first time the FCC issued a decision against a tender cartel. Note that under the Competition Act, the FCC could not impose any penalty on the four undertakings; the undertakings could only be sanctioned if they were to breach the prohibition issued by the FCC in the future.
- **Driving Schools.** The FCC opened an investigation, on November 15, 2001, against the members of the Association of Driving Instructors of the Canton Graubünden and Liechtenstein. The preliminary investigation conducted by the FCC had revealed signs of an unlawful agreement on prices. The FCC had indicated in the past that it would review any similar recommended tariffs, which restrict competition between driving instructors (see 2000/2 report). Similarly, the FCC had ruled out, in May 2000, the tariffs recommended by the Fribourg Association of Driving Schools (see 2000/2 report); this decision was confirmed by the Appeals Commission for competition matters (see 2001/2 report).
- **Mobile Telephony.** On December 3, 2001, the FCC closed its investigation against Swisscom, Sunrise and Orange, the three operators active in the mobile telephony in Switzerland (see 2000/2 report). The price structure and offer structure, as well as the price level, had arisen the suspicion that the three operators had entered into a restrictive agreement. The inquiry into the contractual relations between the companies and developments such as new subscriptions or additional services revealed that the operators had not entered into any price fixing agreement or practice. Further, an abuse of a dominant position by Swisscom has been denied. The competition exerted by Sunrise and Orange indeed prevents Swisscom, the major operator in Switzerland, to behave in a substantially independent manner in the mobile telephony. However, the FCC might open an investigation in the next months as regards the tariffs of calls from fixed phones to mobile phones, as they have repercussions on the competition in the field of the fixed network.
- **Physicians.** On November 5, 2001, the FCC closed its investigation against the members of the Association of Physicians of Zurich (to which 95 % of the Zurich physicians belong) (see 2000/2 report). The members themselves had decided, shortly before the end of the investigation, to abandon their compulsory tariffs. The FCC noted, however, that standardized tariffs are still in use in other areas in Switzerland. On October 24, 2001, the FCC thus opened an investigation against the members of the Association of Physicians of Geneva, who apply tariffs similar to those, which have just been suppressed in Zurich.
- **Railway.** On December 3, 2001, the FCC closed its investigation against the Swiss Federal Railway (see 2000/1 report). A complaint had been lodged by Lokoop AG, a company, which wanted to outsource some of its services to the Swiss Federal Railway, in particular some handling in railway stations. The Swiss Federal Railway had refused to make offers for single railway stations and persisted in making only a wider package offer. As a result of the investigation of the FCC, the Swiss Federal Railway has

accepted to change its practice, which most probably amounted to an abuse of a dominant position under the Competition Act.

- **Supermarkets.** On December 3, 2001, the FCC opened an investigation against Coop, a large supermarket in Switzerland. The preliminary investigation showed that there were signs of a dominant position and of abuse thereof by Coop, in that Coop collected a contribution (called "coopforte") from its suppliers in the form of a systematic 0,5 % deduction from the amount of the suppliers' bills. The Competition Act prohibits the companies having a dominant position to impose on their suppliers inequitable prices or any other unfair commercial conditions.
- **Telecommunications.** On December 5, 2001, the FCC opened an investigation against Swisscom. The preliminary investigation, which had been conducted further to a complaint lodged by Tele2 (see 2001/3 report), showed signs of an unlawful practice. The FCC will in particular investigate whether Swisscom's practice of enclosing advertising for its own services with the invoices pertaining to the line, which are being sent to the customers of other operators, amounts to an abuse of a dominant position.