

Reporting Period : October 02 – December 02

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

Competition Act. The amendment of the Competition Act submitted by the Swiss Federal Council for parliamentary debate on November 7, 2001, has not yet been enacted by the Swiss Parliament. It has only been approved by the National Council on September 26, 2002. The approval by the States Council is expected in spring 2003.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- ***Banking***

On October 9, 2002, the FCC cleared the merger among Valiant Holding ("VHB"), IRB Interregio Bank ("IRB") and Luzerner Regiobank AG ("LRB"). The FCC held that the dealing in unlisted shares constitutes a separate products market.

- ***Information technology***

On September 25, 2002, the FCC cleared the acquisition by IBM Deutschland ("IBM") of the capital stock of PwC Consulting AG ("PwC"), a company held by the partners of PricewaterhouseCoopers AG. As the undertakings concerned were active at the international level, the FCC applied the same products market definitions as the European Commission in the field of IT services (hardware maintenance, software maintenance, business management services, education and training, development and integration services, IT management services and consulting). The FCC particularly focused its investigation on the IT management services and the consulting markets, i.e. where the cumulative market share of the undertakings concerned should likely reach the 20%-30% thresholds. The FCC held that the concentration did not create or strengthen a dominant position of IBM in these markets, as they feature important growth, a high degree of innovation and strong competitive pressure.

- ***Newspapers***

On December 16, 2002, after a second stage investigation, the FCC cleared the acquisition by the Edipresse group of "La Presse Riviera Chablais" and "La Presse Nord Vaudois", two daily papers which are essentially distributed in some districts of the Canton of Vaud. The FCC considered that the concentration strengthens the dominant position of Edipresse in the market of daily papers distributed in the Canton of Vaud, but not to the extent as to eliminate workable competition. The FCC held that the France-Antilles group Hersant (which publishes and distributes two daily papers in a neighbouring area of the market concerned) as well as the local and regional radio and television broadcasting networks in the Canton of Vaud are in position to exert a durable competitive pressure upon Edipresse. Further, by the end of 2002, Edipresse accepted to lift a contractual prohibition on Publigruppe – a company active in the promotion, sale and transmission of press

advertising, which cooperates with practically all the publishing companies in Switzerland – to deal with newspapers competing with Edipresse's newspapers. According to the FCC, this should strengthen the potential competition in the advertising market and, in turn, discipline the behaviour of Edipresse in the readers market.

(FCC press release, December 17, 2002, www.wettbewerbskommission.ch/site/e.html)

Anti-Competitive Practices

- ***Credit cards***

On November 18, 2002, the FCC held that the so-called "non-discrimination clause" applied by Cornèr Banca, Europay, Swisscard AECS and UBS Card Center in their contractual relationships with retailers amounted to an abuse of collective dominant position. This clause prevented retailers from shifting the commissions generated by the use of credit cards on to the credit cards users and, thus, from differentiating their prices according to whether customers pay in cash or by credit card. The FCC considered that Cornèr Banca, Europay, Swisscard AECS and UBS Card Center were collectively holding a dominant position in the Swiss market of credit card and that the non-discrimination clause amounted to an unfair trading condition.

(FCC, press release, December 10, 2002, wettbewerbskommission.ch/site/e.html)

- ***Mobile Telephony***

On October 15, 2002, the FCC opened an investigation against Orange, Sunrise and Swisscom, the three operators active in mobile telephony in Switzerland. The tariffs for calls from fixed phones to mobile phones rank among the highest in Europe and there are signs that these operators might have entered into a price fixing agreement. The investigation is also to show whether Sunrise, Orange or Swisscom hold a dominant position on their own network. According to the FCC, this might be the case, as the operators active in the field of fixed network telephony are legally obliged to negotiate with the operators active in mobile telephony.

(FCC, press release, October 17, 2002, wettbewerbskommission.ch/site/e.html)

- ***Physicians***

On December 16, 2002, the FCC closed its investigation against the members of the Association of Physicians of Geneva. The members themselves had decided, on September 9, 2002, to abandon their tariff recommendations in the field of supplement health insurance.

(FCC, press release, December 20, 2002, wettbewerbskommission.ch/site/e.html)

- ***Press advertising***

On November 6, 2002, the FCC opened a regular investigation against Publigroupe, a holding company active in the promotion, sale and transmission of press advertising. Publigroupe has been granted an exclusive advertising management right by several publishing companies. Based on this right, Publigroupe refuses to pay back sales commissions to some of its competitors. Therefore, the advertisers dealing with such competitors are forced to pay a higher price than they would have to pay by dealing directly with Publigroupe to advertise in the newspapers subject

to Publigroupe's exclusive right. The investigation is to show whether Publigroupe's refusal is discriminating against competitors and whether such refusal amounts to an abuse of a dominant position.

(FCC, press release, November 11, 2002, wettbewerbskommission.ch/site/e.html)

- **Watches**

- On November 4, 2002, the FCC initiated a regular investigation against ETA SA Fabrique d'Ebauches ("ETA"), a company of the Swatch group specialized in the production of watch components and watch movements. In July 2002, ETA had announced its decision to limit its supply of movement blanks ("ébauches") as of January 1, 2003, with a total stop at the end of 2005. Later on, ETA would supply finished movements only. The preliminary investigation, opened by the Secretariat of the FCC on October 3, 2002, had shown that ETA might abuse a dominant position in the market of movement blanks for mechanic watches.

(FCC, press release, November 5, 2002, www.wettbewerbskommission.ch/site/e.html)

- On November 18, 2002, the FCC forced ETA, by means of interim measures, to yearly provide its current clients – during the investigation and at the current market conditions – with 85 % of the mechanic movement blanks and with 15 % of the finished movements sold on average to the clients concerned over the last three years. In addition, in order to guarantee the immediate delivery of movement blanks, the FCC withdrew the suspensive effect of possible appeals against its decision.

(FCC, press release, November 19, 2002, www.wettbewerbskommission.ch/site/e.html)