

Swiss Competition Report

Reporting Period: October 03 – December 03

This section reviews developments concerning the Federal Act of October 6, 1995 on Cartels and Other Restraints of Competition (the “Competition Act”), which is enforced by the Federal Competition Commission (“FCC”). Appeals against decisions of the FCC are heard by the Appeal Commission for Competition Matters (the “Appeal Commission”).

Merger Control

- ***Newspapers***

On October 20, 2003, after an in-depth investigation, the FCC cleared, with conditions, the increase of the indirect participation of Ringier SA ("Ringier") in SA Le Temps (see 2003/3 report). As a result of the acquisition, Edipresse Publications SA ("Edipresse") and Ringier have equal shareholding in SA Le Nouveau Quotidien ERL SA ("SANQ"), which in turn owns 82.6% of SA Le Temps. In order to ensure the independence of SA Le Temps from the now two major shareholders Edipresse and Ringier, the FCC maintained and extended the conditions imposed at the time of the creation of the newspaper Le Temps, in December 1997. First, the chairman of the board of SA Le Temps as well as the one of SANQ must be independent from Edipresse and Ringier. Second, any modification in the shareholding of Edipresse and Ringier will be subject to the approval of the FCC. Third, Edipresse and Ringier must inform the FCC of any agreement between them in the range of medias in the French language, distributed in Switzerland.

Abuse of Market Power

- ***Telecommunications***

On October 6, 2003, the FCC closed the investigation against Swisscom, concluding that Swisscom did not infringe the amicable settlement, which it had made on May 6, 2002 with the FCC, relating to advertisements attached to invoices for telephone connection (see 2002/2 report). The advertisements were not mailed to customers of other service providers with the intent to cause their return to Swisscom, but rather to avoid that Swisscom customers switch over to another service provider. The FCC will now clarify whether further measures in relation to the amicable settlement are necessary to ensure competition neutrality of the invoices in question.

- ***Entertainment***

On December 4, 2003, the FCC announced that the investigation opened on April 15, 2002 against TicketCorner in relation to the exclusivity provisions, which it included in its distribution agreements with event organizers showed that TicketCorner had abused of its dominant position. Under the exclusivity provisions in question, event organizers who wanted to contract with TicketCorner had to commit to distribute, for a certain period of time, all the tickets for all their events exclusively through the TicketCorner distribution network. The FCC has found that TicketCorner holds a

dominant position on the ticket distribution network and that the exclusivity provisions constitute unfair business conditions, which hinder new competitors from entering or competing in the relevant market.

Vertical Agreements

- ***Credit cards***

On December 15, 2003, the FCC opened an investigation regarding a possible unlawful agreement on Interchange Fees for the MasterCard and Visa credit card networks. Investigations showed that, in Switzerland, acquirers (i.e., credit card companies which affiliate the traders) and issuers (i.e., companies issuing the credit cards) reach agreement to fix the "Domestic Interchange Fee", i.e. the fee applying – for MasterCard and Visa systems – to transactions within Switzerland. Since the level of the Domestic Interchange Fee influences the conditions for competition on the "acquiring" and "issuing" markets, the FCC will also examine these markets.

- ***Internet services***

On December 15, 2003, the FCC compelled Swisscom to give up its discount practice that allows its subsidiary Bluewin to benefit from cheaper prices for the use of the network than competing ADSL service providers. This decision confirms the provisional measures ordered by the FCC at the time of the opening of the investigation (see 2002/2 report). The FCC concluded that Swisscom enjoys a dominant position on the wholesale market for broadband Internet services. The use of the Swisscom network is the only possibility for independent Internet service providers to reach their clients everywhere in Switzerland. The discounts granted to Bluewin were discriminatory and not justified on economic grounds.