

## **Reporting Period : January 98 - March 98**

### **ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS**

- **Draft Notice**

The FCC is finalizing a notice on assessment of restrictions on competition, to provide guidance as to whether workable competition is restricted or eliminated by agreements or practices, whether a dominant position exists, and whether a concentration creates or reinforces a dominant position capable of eliminating workable competition.

- **Fees**

On February 25, the Swiss Federal Council issued a Regulation on fees to be paid in relation to procedures before the competition authorities. Any person starting proceedings must pay fees (at a rate of CHF 130/hour but varying with the economic importance of the transaction). No fees are due if a concentration is cleared at the end of the first stage investigation. The Regulation entered into force on April 1, 1998. (RO 1998 919, 31.3.98).

- **MOBILE TELEPHONY**

The Federal Communication Commission decided to grant the two available licenses in the mobile telephony sector to DiAx AG (a company controlled by the major Swiss electricity companies and SBC Communications, a U.S. company) and Orange (a company controlled by Orange Plc, Viag, Swissphone and the Banque Cantonale Vaudoise).

- **Notification Form**

The FCC has circulated a draft form specifying the information to be provided by undertakings notifying a concentration. Foreign notification forms are acceptable if they are in a Swiss official language and contain all information required by the Swiss Merger Regulation. The FCC advises contacting the FCC before using a foreign notification form.

### **Administrative and Judicial Decisions**

#### **Merger Control**

- **Animal Health and Poultry Genetics**

On February 16, the FCC imposed fines of CHF 60,000 (ECU 36,000), on Rhône-Poulenc SA and Merck & Co., Inc. for setting up Merial, a concentrative joint-venture, prior to approval by the FCC. The FCC held that : Swiss merger rules apply if the required thresholds are met, even if the undertakings concerned are not active in Switzerland; implementation is prohibited before approval, even if it is to take place abroad exclusively, and that administrative fines may be imposed irrespective of negligence by the parties.

- **Banking**

- On February 2, the FCC decided to open a second stage investigation of the acquisition by General Electric Capital Corporation of the Banque Procredit, owned by Swiss Bank Corporation. (FF 1998 599, 3.3.1998).

- On February 2, the FCC decided to open a second stage investigation of the merger between Union Bank of Switzerland and Swiss Bank Corporation. The FCC held that the operation might create a dominant position in the retail banking business. The FCC refused to authorize the banks to carry out the concentration in Switzerland provisionally, but did not oppose implementation abroad.

(FF 1998 600, 3.3.1998; Le Journal de Genève, 3.2.1998).

- **Construction**

The FCC cleared the acquisition of Locher & Cie By Zschokke Holding AG.

- **Electronic Transactions**

The FCC cleared the formation of Swisskey AG by Swiss com, Telekurs Holding AG und DigiSigna. Swisskey will be in the business of ensuring the security of electronic transactions.

- **Newspapers**

-On February 2, the FCC imposed a fine of CHF 5,000 (ECU 3,000) on Druckerei Wetzikon AG for acquiring control of Anzeiger von Uster prior to approval by the FCC. The transaction was implemented three days before (properly) notifying the FCC of the transaction.

-In the matter Le Temps SA (a joint venture between Le Nouveau Quotidien ERL SA and La Société Anonyme du Journal de Genève et de la Gazette de Lausanne), the Appeal Commission denied the capacity to appeal to the President of the Association des Amis du Journal de Genève et Gazette de Lausanne. The matter is now pending before the Swiss Supreme Court.

### **Anti-competitive Practices**

- **Retail distribution**

The FCC decided to open an investigation in order to determine whether Coop, Migros, EG Dritte Kraft SA, Syntrade Service SA and Mabeag AG have entered into anti-competitive agreements or practices with respect to supply in the retail distribution sector. (FOSC, 27.1.1998).