

Reporting Period : January 99 - March 99

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Annual Report** The FCC has published its 1998 annual report on the Internet. As to merger control, twenty-six concentrations were notified, out of which twenty-three were cleared during the first stage investigation, two were accepted after the second stage investigation subject to certain conditions (UBS, see 1998/2 report; Bell/SEG Poulets, see 1998/4 report) and one was accepted after having been modified by the parties on FCC's suggestion (Schaer Thun AG/BTM Medien, see 1998/2 report).

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **Banking** On March 3, 1999 the FCC approved the sale by UBS of twenty-six offices to Banque Migros, Banque Coop and the RBA Group (which is composed of Spar + Leihkasse Bern, Regiobank Solothurn and Luzerner Regiobank). Such sale was a condition imposed by the FCC when it approved the UBS/SBS merger (see 1998/2 report), in order to avoid a possible collective dominance of the new UBS and Credit Suisse in the retail banking and commercial credits to small and mid-sized undertakings in Switzerland.

During the first quarter of 1998, the FCC cleared the acquisition of Paribas by Société Générale and the acquisition of Banque du Gothard by Rentenanstalt.

- **Automobile Industry** During the first quarter of 1999, the FCC cleared the acquisition of Volvo by Ford and the acquisition of Adtranz by Daimler Chrysler.
- **Food Products** On March 1, 1999 the FCC approved the setting up of a joint venture, Swiss Dairy Food SA, by Toni SA and the Sântis Group.
- **Heating, Ventilating and Air-Conditioning Systems** On March 11, 1999 the FCC cleared the creation of a global joint venture (including two jointly controlled companies : Toshiba Carrier Corporation and Toshiba Carrier United Kingdom Limited) by Toshiba Corporation and Carrier Corporation, a company controlled by United Technologies Corporation.
- **Newspapers** On March 3, 1999 the FCC cleared the acquisition of Agence SDP SA by La Tribune de Genève SA, a company controlled by the Edipresse Group. While Agence SDP SA did not meet the required turnover thresholds, the acquisition had to be notified because of the dominant position of the Edipresse Group already established by the FCC in a previous decision (see 1997/4 report).

ANTI-COMPETITIVE PRACTICES

- **Bovine Insemination** The FCC held that the Federation Suisse pour l'Insémination Artificielle (FSIA) had abused its dominant position by imposing exclusivity agreements on veterinary surgeons. Pursuant to these agreements, veterinary surgeons

were permitted to supply to third parties only bull semen supplied by FSIA (whose statutory monopoly in this sector ended on July 1, 1995).

- **Camera Industry** The FCC held that Minolta did not abuse a dominant position by refusing to supply spare parts to independent repairers. For market definition purposes, the FCC stated that the repair sector could not be distinguished from the sale sector. Having defined the market broadly, the FCC held that Minolta had no dominant position in the relevant market.
- **Credit Cards** On January 19, 1999 the FCC rejected Erdöl-Vereinigung's application for interim relief against the Telekurs Group (Telekurs Holding AG, Europay (Switzerland) SA and Payserv AG). Erdöl-Vereinigung complained that the Telekurs Group was charging costs relating to payment by EC cards in gas stations. The FCC held that one requirement for the granting of such relief, namely the fact that serious and irreparable harm may be caused (should the relief not be granted), was not met in this instance. The FCC, however, started a preliminary investigation to assess whether unlawful restraints of competition exist and whether the Telekurs Group has a dominant position in the relevant market.
- **Gas Industry** On March 1, 1999 the FCC held that Carbagas, AGA GAS, PanGas and Sauerstoffwerk Lenzburg distribution agreements were unlawful under the Competition Act. Although these firms had terminated their price fixing and customers and market-sharing cartel when the Competition Act entered into force, their customers were still bound by the distribution agreements implementing the cartel.
- **Non-Competition Clause** The Swiss Supreme Court held that a one-way non-competition clause could not be reviewed under the Competition Act, except where such a clause was imposed on a trading partner by a dominant firm. As a consequence of this decision, a non-competition clause would not, in a merger case, be reviewable under Art. 5 of the Competition Act (which concerns unlawful agreements) even if such clause could not be considered as an ancillary restriction induced by the merger.