

Reporting Period : October 98 – December 98

ENFORCEMENT POLICY AND LEGISLATIVE DEVELOPMENTS

- **Merger Notification Form** The new notification form (see last report) has now been published in *Droit et Politique de la Concurrence* 1998/3, p. 507.

ADMINISTRATIVE AND JUDICIAL DECISIONS

Merger Control

- **Animal Health and Poultry Genetics** On December 21, 1998, applying the test developed in the Curti case (see last report), the FCC reconsidered its February 16, 1998 decision imposing fines of CHF 60,000.- on Rhône-Poulenc SA and Merck & Co for setting up Merial, a concentrative joint-venture, prior to the FCC's approval. The fines have been reduced respectively to CHF 23,625 and CHF 11,625 mainly because of the low turnover of the undertakings in Switzerland and because the concentration has not created a dominant position in the Swiss market.
- **Banking** On November 17, 1998 the FCC summoned UBS to comply with the conditions set to the merger between UBS and SBS and, accordingly, prohibited UBS from regrouping certain of its offices. In its Mai 4, 1998 decision the FCC approved the UBS/SBS merger on the condition that the new entity divest 25 of its offices in four specific areas in Switzerland. The regrouping by UBS of a certain number of its offices was affecting the possible acquisition of the 25 offices by a competitor.
(Le Temps, December 18, 1998)
- **Heating Systems** The FCC prohibited the cartel set up in the sector of the maintenance of heating systems sector. The FCC held that the listing of prices by various associations in this sector amounted to unlawful price fixing agreements.
- **Car Industry** The FCC cleared the merger of Daimler-Benz AG and Chrysler Corporation.
(DPC 1998/3, 418)
- **Newspapers** On December 8, 1998 the FCC decided that the increase of the shareholding in the Bund by Neue Zürcher Zeitung from 45% to 90% did not have to be notified. While the FCC confirmed that change from joint control to sole control constitutes, as a rule, a concentration which has to be notified, it found that in this instance there was no change in control as Neue Zürcher Zeitung already controlled the board and the management of the Bund.
(Press release, December 8, 1998)
- **Poultry Industry** After a second stage investigation the FCC approved the acquisition of SEG-Poulets AG by Bell AG, a subsidiary of the Coop Group, on the condition that Favorit AG, a company indirectly controlled by Bell AG, be sold to a competitor. This condition aims at preventing Coop and Migros from holding a collective dominant position capable of eliminating workable competition. In this decision the FCC set out for the first time in detail the collective dominance test.

(DPC 1998/3, 392)

- **Steel Industry** The FCC cleared the merger of Krupp AG Hoesch Krupp and Thyssen AG.
(DPC 1998/3, 415)
- **Telecommunications** The FCC cleared the acquisition by Swisscom Telekommunikation Holding GmbH, a subsidiary of Swisscom, of the joint control of UTA Telekom AG, an Austrian company. Prior to the acquisition, UTA Telekom AG was under the sole control of Telekom Oesterreich Beteiligungs GmbH.
(DPC 1998/3, 412)

ANTI-COMPETITIVE PRACTICES

- **Drugs** On December 12, 1998 the FCC issued a (non-binding) recommendation with a view to authorizing, under certain conditions, the sale of drugs by mail. As of today, such sale is prohibited in most Swiss Cantons.
(FCC Press release, December 12, 1998)
- **Car Dealers** On November 4, 1998 the FCC initiated a preliminary investigation against Citroën (Suisse) SA to assess whether the distribution agreements used by the distributors contravene the Competition Act.
(FCC Press release, November 4, 1998)

In an interview, the President of the FCC has confirmed that the FCC is investigating alleged distribution practices of Audi/Volkswagen according to which Italian Audi/Volkswagen dealers are prevented from making sales to customers domiciled in Switzerland.

- **Weather Forecasts** On November 19, 1998 the FCC adopted interim measures imposing on the Swiss Institute for Weather Forecast the obligation to market its services to public entities and private customers on the same conditions. The FCC held that the Swiss Institute for Weather Forecast was likely to have a dominant position and therefore was not permitted to apply dissimilar conditions to equivalent transactions. In this decision, the FCC set out the requirements for the granting of interim measures: (i) the practices in issue are prima facie likely to constitute an infringement of competition rules, (ii) the urgency of the requested measures is proven, (iii) should the measures not be adopted, then a serious and irreparable damage would be caused. Further, the adopted measures must not exceed what is necessary in the given situation.
(FCC Press release, November 19, 1998)