

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWITZERLAND

(1 July 1999 - 30 June 2000)

I. Changes to competition law and policy, proposed or adopted

1. Summary of new provisions concerning competition law or related legislation

1. The Federal Act of 6 October 1995 on cartels and other restraints of competition (LCart) has not been amended since it entered into force on 1 July 1996.
2. However, in the autumn of 1999 the Federal Department of Economic Affairs set up a Commission of Experts mandated to revise LCart, *inter alia* with a view to introducing direct sanctions.

2. Other relevant measures, including new guidelines

3. None.

II. Enforcement of competition law and policy

1. Action against anticompetitive practices, including agreements and abuses of dominant positions

a.1) Summary of the activity of the competition authorities

4. During the period under review, the Secretariat of the Competition Commission (Comco) completed 15 preliminary investigations:
 - nine involved *unlawful agreements* (Art. 5, LCart);
 - six involved *abuses of dominant positions* (Art. 7, LCart).
5. Of these 15 preliminary investigations:
 - seven cases were closed with no action taken, for lack of evidence of unlawful restraint of competition as defined by LCart;
 - in two cases, the firms in question agreed out of court on measures to discontinue or prevent restraints of competition.

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6. During the period under review, Comco completed 12 ordinary investigations:

- eight involved *unlawful agreements (Art. 5, LCart)*;
- two involved *abuses of dominant positions (Art. 7, LCart)*;
- two involved both *unlawful agreements* and *abuses of dominant positions (Arts. 5 and 7, LCart)* *simultaneously*.

7. At 30 June 2000, 20 preliminary investigations and 16 ordinary investigations were in progress.

Name of case	Art. 5, LCart (agreements)	Art. 7, LCart (dom. pos.)	Arts. 5 and 7, LCart	Outcome (see legend)	Reference in DPC
Ramoneurs suisses	X			1	not published
SWICO Recycling-Garantie	x			1	1999/3, pp. 373 ff.
Emoluments of travel agents	x			1	not published
Swisscom – Line rentals		x		1	1999/3, pp. 375 ff.
Coopération Kassensturz – saldo	x			1	2000/1, pp. 8 ff.
Bidding agreement in the canton of Ticino	x			1	not published
Tennis instructors	X			2	not published
Apothekerzeitung		x		2	not published
Lokoop AG/CFF		x		3	2000/1, pp. 1 ff.
Private fees of doctors	X			4	-
List of drugs for which the insured bear the cost (LPPA)	X			4	-
Europay / Which SA			X	4	-
Liability insurance for automobiles and motorcycles	X			4	-
Valais ski-lift passes	x			4	-
Kinofilmverleih			x	4	-
ASTAG Frachttarife	x			4	-
Jahresumsatzprämie Pressewerbung	x			4	-
Migros/Watt – EBM		x		4	-
Migros/Watt – SIR		x		4	-
Bödeli AG/Tele 24		x		4	-
XDSL-Swisscom product line		x		4	-
Lift market			x	4	-
Petrol market in Bienne	x			4	-
Standards of the Association Bio Suisse			x	4	-
Sealing and asphaltting in Geneva	x			4	-
Credit card terminals	x			4	-
Repairs to electrical appliances	x			4	-
Bidding agreement amongst Swiss builders	x			4	-
Cigarette prices	x			4	-
Medicinal drug market (SANPHAR)	X			5	forthcoming
Compulsory health insurance (Zurich)			X	5	1999/3, p. 463
Bahnhofkioske			x	5	1999/3, pp. 400 ff.
Swiss Meteorological Institute		x		5	1999/3, pp. 415 ff.
Price of daily newspapers in Ticino	x			5	2000/1, pp. 16 ff.
Restaurant beverage prices in French-speaking Switz.	x			5	2000/1, pp. 25 ff.
BKW FMB Energie AG		x		5	2000/1, pp. 29 ff.
Agreements for supplying retailers	x			5	2000/2, pp. 212 ff.
Book distribution agreement	x			5	1999/3, pp. 441 ff.
Vitamin cartel (Roche, BASF, RP)	x			5	2000/2, pp. 186 ff.
Distribution of Volkswagen cars	x			5	2000/2, pp. 196 ff.
Suggested prices for driving schools (AFEC)	X			3 + 5	2000/2, pp. 167 ff.
Private fees of Zurich doctors	X			6	-
Teleclub/Cablecom		x		6	-
JC Decaux/Affichage Holding	x			6	-
Lokoop/CFF		x		6	-
Migros/Watt – FEW		x		6	-
Mobile telephone rates			x	6	-
Swiss petrol market	x			6	-
Distribution of Citroën cars	x			6	-
Road surfacing (north-east Switzerland)	x			6	-

(cont'd)

Name of case	Art. 5, LCart (agreements)	Art. 7, LCart (dom. pos.)	Arts. 5 and 7, LCart	Outcome (see legend)	Reference in DPC
Bidding agreement (national library)	x			6	-
Agreement on distribution of watches	x			6	-
Cash payment clause (credit cards)		X		3 + 6	-
Distribution of dental products		X		3 + 6	-
Dental industry		X		3 + 6	-
Argovie doctors' association (AAV)	X			3 + 6	-
Distribution of veterinary drugs	X			3 + 6	-

Legend:

DPC = *Droit et Politique de la Concurrence* (publication of the Swiss competition authorities, available on the Internet at www.wettbewerbskommission.ch).

- 1 = preliminary investigation: case closed with no action taken (no evidence of unlawful restraint of competition)
2 = preliminary investigation: case closed with no action taken (agreement with the parties under Art. 26, par. 2, LCart)
3 = preliminary investigation: case closed with action taken (investigation opened)
4 = preliminary investigation: in progress at 30 June 2000
5 = investigation: case closed
6 = investigation: in progress at 30 June 2000

Summary of important cases

8. **Driving schools**¹: On 8 May 2000, Comco prohibited instructors belonging to the driving school association of the canton of Fribourg (AFEC) from agreeing, in the future, on rates for automobile, motorcycle and lorry driving lessons, as well as on rates for instruction in traffic awareness. In Comco's view, price recommendations constitute cartels that are presumed unlawful if they are followed by the firms for which they are intended. The fact that the recommendations are not mandatory matters little. In this case, the investigation established that the price agreements in question were followed by the driving school instructors and that this had a notable impact on, if not eliminated, effective competition between instructors in the canton of Fribourg. The results of the investigation confirmed evidence of unlawful restraints of competition that the Secretariat had uncovered during a number of preliminary investigations conducted in several Swiss cantons in the spring of 1999.

9. **Sanphar**²: The Sanphar Association had been regulating the size of margins and discounts in the distribution of medicinal drugs in Switzerland, along with the conditions imposed on the Association's wholesalers. On 7 June 2000, Comco decided to prohibit these agreements because they had a significant effect on competition. With regard to prices (margins and discounts), the Sanphar agreement had operated on three levels. First, drug importers and producers agreed to limit the discounts granted to wholesalers to roughly 2 percent of the ex-factory price. Second, wholesalers could not give their own customers discounts in excess of the margins of Sanphar wholesalers. Third, pharmacists, druggists and dispensing physicians were required to set their margins in accordance with a set percentage or amount based on a drug's final selling price. As for the conditions imposed on wholesalers, the Sanphar agreement set a minimum product range they were required to carry, and a minimum number of customers to whom they were required to sell, before they qualified for preferential terms on their purchases from producers or importers. The conditions laid down in that agreement constituted barriers to the market entry of new wholesalers that could compete with existing firms.

10. **SMA**³: In its SMA decision, the Commission found that the Swiss Meteorological Institute held a dominant position in various segments of the market for supplying weather data, and that it had abused that position insofar as its services varied from one customer to another. Confirming an order imposing temporary measures, the Commission obliged the Institute to make its services available on equivalent terms, and to submit its cost calculations. Even though the Institute was run by the federal government, the Commission treated it like a firm subject to the rules of competition. The Commission also rejected the

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argument that federal legislation on meteorology precluded application of the LCart. The SMA has appealed the decision.

11. **Recommended beverage prices**⁴: In this case, the Commission reviewed price recommendations for certain beverages served in restaurants. The recommendations had been issued to their members by five trade associations belonging to the Gastrosuisse federation. After conducting a preliminary investigation which confirmed that there was evidence of an unlawful pricing agreement, the Commission Secretariat arranged an out-of-court settlement in which the parties concerned stated that each restaurant could set its prices freely; they also pledged never again to make similar recommendations. The terms of the settlement were approved by the Commission.

12. **Mobile telephone rates**⁵: On 15 May 2000, the Competition Commission Secretariat opened an investigation into competition in the Swiss mobile telephone market. The procedure was triggered by evidence of a joint dominant position and the level of rates available on the market. It can be seen that the structure and level of the prices charged by the three companies currently operating in Switzerland are in fact extremely similar, in respect of both outgoing calls (origination) and incoming calls (termination). The investigation will ascertain whether this situation is attributable to unlawful restraints of competition in the form of abuse of dominant position and/or restrictive agreement.

13. **Line rentals**⁶: On 31 August 1999, the Competition Commission Secretariat closed a preliminary investigation and decided to take no action with regard to certain practices by Swisscom in the area of telephone line rentals. At issue was the company's pricing policy (rate increases and its system of discounts), along with certain changes to the infrastructure it provided customers. The review did not uncover any evidence of abuse of dominant position. In this context, it can also be noted that the Commission handed down an advisory opinion regarding Swisscom's position in line rentals in an interconnection case before the Communications Commission (DPC 2000/1, p. 70).

14. **Investigation of the vitamin market**⁷: In a decision of 17 April 2000, Comco found that the agreements between members of the world vitamin cartel, which had had repercussions in Switzerland from 1990 until 1999, were unlawful. This case triggered a policy debate on a possible strengthening of the system of sanctions under the LCart. A group of experts has been asked to explore proposals for reform, including the introduction of direct sanctions.

a.2) Summary of the activity of the Price Monitoring Office

15. The Price Monitoring Office is responsible for preventing cartels or firms wielding great market power from imposing unfair prices or excessive increases. Today, the Office deals primarily with prices set by the government or by powerful corporations⁸. The main cases reviewed by the Price Monitoring Office between 1 July 1999 and 30 June 2000 included assessments of rate increases submitted by the authorities pursuant to Articles 14 and 15 of the federal Price Monitoring Act (LSPr), the price proposals by GRAT/TarMed (creation of a pricing structure for medical services), cable television charges, postal rates and the prices of Microsoft products.

16. Changes in **prices set or approved by the authorities** must first be submitted to the Price Monitoring Office for an opinion. More than 120 announced price increases were analysed over the period under review. Most of the submissions by communes concerned prices for water and wastewater treatment and garbage collection taxes, while those of the cantons primarily involved health care.

17. Analysis of **the new GRAT/TarMed medical price list**⁹ showed that, contrary to what had been announced, the price changes were not neutral from a cost standpoint but had induced additional costs of

about a billion francs. The adjustments that were made subsequent to the intervention of the Price Monitoring Office brought considerable improvements. However, cost neutrality has not yet been ensured, and to date no contractual solution has been found.

18. Subscribers to **the Cablecom cable network**¹⁰ also benefited from the activity of the Price Monitoring Office. Following the negotiations undertaken, their subscription fees could not be raised across-the-board to SF 24 but would range between SF 17 and 22. In addition, the fee was lowered to SF 14 per month for subscribers who wished only to listen to the radio.

19. The postal increases for **letters and parcels** that were supposed to take effect on 1 July 2000 were examined at length, and a recommendation was made to the competent federal authority (the Federal Department for the Environment, Transport, Energy and Communications, DETEC). The authority has not yet taken a decision.

20. Following a complaint by consumers that the prices of **Microsoft products** were significantly higher in Switzerland than in the United States, the Price Monitoring Office opened an investigation to ascertain whether and to what extent the price differentials persisted, the exact reasons for them and whether any action should be taken.

a.3) Summary of the activity of the Federal Communications Commission

21. The Communications Commission (ComCom) was instituted as an industry regulatory authority when the Telecommunications Act (LTC) was amended. Its primary mission is to award concessions for telecommunications services, to the extent it has not already delegated the authority to do so to the Federal Communications Office (OFCOM, Art. 5, LTC).

22. For its part, the Competition Commission has been given an advisory role in the area of interconnection. Only firms in a dominant position may be compelled to grant interconnection. The Competition Commission has to rule on the issue of dominant position on ComCom's behalf (Art. 11, par. 3, LTC).

23. In this context, it should be noted that the Competition Commission gave an advisory opinion regarding Swisscom's position in the line rentals market in connection with an interconnection case that had been brought before the Communications Commission by the Commcare company (DPC 2000/1, p. 70). Here, ComCom had already rejected provisional measures in an incidental ruling of 28 June 1999 in respect of both the interconnection of rented lines and the equipment involved (i.e. direct access to user hook-ups, unbundling the local loop). It was in connection with the primary case, which is still pending, that the Competition Commission's expert report established that Swisscom enjoyed a dominant position in line rentals in the local loop, but not for the rest of the network. Given the case's complexity, ComCom's decision was not expected until the summer of 2000.

a.4) Summary of the activity of the Appeals Commission for Competition Matters

24. The Appeals Commission for Competition Matters handed down a number of decisions affecting formal aspects of the LCart's enforcement:

- First, it received an appeal from a company that considered that Comco could not summon it to a hearing after the complainant had taken a position on the Secretariat's draft ruling. The Appeals Commission did not consider the merits of the appeal because it deemed that the

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firm had not shown that Comco's summons, insofar as it constituted an incidental decision, inflicted harm on the firm that was difficult to remedy¹¹.

- It also received an appeal of a decision in which Comco had extended by 29 days the deadline for one of the parties to a case to respond to a draft decision of the Secretariat. The Appeals Commission granted the company's appeal, finding that Comco had not stated adequate grounds for its action (the amount of time usually accorded being 30 days)¹².
- It also granted an appeal to reinstate the suspensive effect that Comco had withdrawn in an incidental decision regarding provisional measures. According to the Appeals Commission, compelling reasons had to be given for withdrawal of the suspensive effect of a Comco decision, especially if Comco takes provisional measures¹³.
- Lastly, it granted an appeal against a Comco decision to take provisional measures. The Appeals Commission found that in the case in question not all of the four required prerequisites for provisional measures—probable cause, injury that would be difficult to reverse, urgency and proportionality—had been satisfied¹⁴.

25. The Appeals Commission also took a position on certain material aspects of the LCart.

- In its ruling of 23 September 1999 on price lists for the maintenance and repair of boilers and gas and fuel oil burners, it held that 1) parallel behaviour did not constitute an agreement in restraint of competition within the meaning of Art. 4, par. 1, LCart, and 2) non-compulsory calculation aids had to be assessed in the light of Art. 5, par. 2, LCart¹⁵.
- In its ruling of 9 March 2000, the Appeals Commission recalled that preliminary investigations were informal procedures, and that the final reports of such investigations did not constitute formal decisions within the meaning of the Act on Administrative Procedure (LPA)¹⁶.

a.5) *Summary of the activity of the cantonal courts*

26. None.

a.6) *Summary of the activity of the Federal Court*

27. The Federal Court (TF) has handed down two important competition-related decisions. The first involved mail-order drug sales and their effects in respect of the Domestic Market Act. The second dealt with parallel imports of goods protected by patents:

- MediService SA is a mail-order drug retailer. In March 1997 it was authorised to operate an official pharmacy in the canton of Soleure. On 28 January 1998, the Council of State of the canton of Vaud adopted a regulation prohibiting mail-order sales and drug shipments through the post. MediService lodged an appeal under public law with the Federal Court to quash the prohibition. In its ruling, the Court held that the prohibition of shipments of drugs through the post could not be applicable to the appellant, who was therefore entitled to free access to the Swiss market under the Domestic Market Act (LMI)¹⁷.

- Under the Kodak ruling¹⁸, patent rights are exhausted only on a national level. Parallel imports of patent-protected products may therefore be blocked under patent legislation. Any resultant restraints of competition must be examined in the light of the LCart, since even though a division of markets stems from the territorial delineation of national jurisdiction, a patent-holder is not entitled to separate markets artificially. In particular, a substantial price differential when a patented product is first marketed in Switzerland, in comparison with similar economic and legal framework conditions abroad, constitutes an unlawful abuse sanctioned by the legislation on cartels (Art. 7, LCart).

a.7) *Summary of the activity of the Federal Council*

28. None.

b) *Description of significant cases, including cases with international implications*

29. **Investigation of imposed prices in bookstores in German-speaking Switzerland.** In a decision of 6 September 1999, Comco prohibited application of a system of imposed prices that had been in effect for German-language books. The prohibition did not focus on the system of imposed prices between publishers and booksellers as such, but rather the fact that, in the case in question, there was horizontal co-ordination that imposed the pricing system on the entire industry. The decision has gone to appeal before the Appeals Commission for Competition Matters.

2. *Mergers and acquisitions*

a) *Statistics on the number, size and type of mergers notified and/or controlled under competition laws*

30. During the period under review, 40 concentration transactions were reported: 17 in the latter half of 1999 and 23 in the first half of 2000. The Commission did not conduct any extensive reviews.

31. The following table summarises Comco's activity in the area of corporate mergers.

Names of participating firms and transaction type	Result	Publication in DPC
2nd Half 1999		
HSBC Holdings plc / Republic New York Corp. (M)	⊕	not published
Telekurs AG (UBS AG, Credit Suisse, Viseca) (JV)	*	not published
Basellandschaftliche Kantonalbank / ATAG Asset Management (AC)	*	not published
Valora Holding AG/Melisa (AC)	⊕	1999/3, p. 468
CSG/Belcom Holding (AC)	⊕	1999/3, p. 476
TeleZürri AG (JV)	⊕	1999/3, p. 479
Swisscom/Debitel (AC)	⊕	1999/3, p. 480
Bon Appétit Holding – Usego Hofer Curti	⊕	1999/3, p. 478
ITV/IVG – TUI (Suisse) AG (AC)	⊕	1999/3, p. 482
SBB AG – Transpetrol GmbH (JV)	⊕	1999/3, p. 487
Exxon-Mobil (M)	⊕	1999/3, p. 478
Hoechst-Rhône Poulenc (Aventis) (M)	⊕	1999/3, p. 487
Holtzbrinck – Verlagsgruppe Handelsblatt/Dow Jones (AC)	⊕	1999/4, p. 603
Alcan-Pechiney-Algroup (M)	⊕	1999/4, p. 606
GE Capital / Lisca AG (M)	⊕	1999/4, p. 602
Gétaz/Romang-Miauton (AC)	⊕	2000/1, p. 54

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Names of participating firms and transaction type	Result	Publication in DPC
2nd Half 1999		
Volvo-Scania (M)	⊕	2000/1, p. 51
Freecom-Dangaard (AC)	⊕	2000/1, p. 43
Rheinmetall-Contraves (AC)	⊕	2000/1, p. 50
1st Half 2000		
Rentenanstalt / STG Holding AG (AC)	*	not published
Banque Nationale de Paris / Paribas (AC)	⊕ (♦)	forthcoming
Kuoni/TUI (JV)	⊕	forthcoming
Berner Oberland Medien AG (M)	(∇)	forthcoming
Basler Kantonalbank / Coop Bank (AC)	⊕	2000/1, p. 40
“ avec. ” (SBB, Migros, Kiosk AG) (JV)	⊕	2000/1, p. 36
NZZ AG/Buchdruckerei Buchs AG (AC)	⊕	2000/1, p. 41
Railtour Suisse SA/RailAway AG (JV)	⊕	2000/1, p. 45
GU Sat.1/Ringier AG (JV)	⊕	2000/1, p. 46
Dow Jones Reuters Business Interactive	⊕	2000/1, p. 43
Actebis-CHS (AC)	⊕ (♦)	2000/1, p. 69
European Aeronautics Defence & Space Company (JV)	⊕	2000/1, p. 66
British Petroleum-Amoco/Mobil (JV)	⊕	2000/1, p. 53
TA-Media/X. (AC)	⊕	forthcoming
Rätia Energie AG (JV)	⊕	2000/2, p.
Südostschweiz Pressevertrieb AG (JV)	⊕	2000/2, p.
EM.TV & Merchandising AG (JV)	⊕	2000/2, p.
Veba/Viag (M)	⊕	2000/2, p.
Radio RI (JV)	⊕	2000/2, p.
NZZ/Bertelsmann – SSB (JV)	⊕	2000/2, p.
COS-Primus/Online (M)	⊕	-
Totalfina-Elf Aquitaine (M)	⊕	2000/2, p.
Tobler-Alruma (AC)	⊕	2000/2, p.
Alstom-Alstom ABB Power Generation (AC)	⊕	2000/2, p.
Bon Apétit-Bell Gastro	⊕	2000/2, p.

Legend:

- ⊕ = No objection after preliminary investigation (Art. 32, LCart)
 - ⊗ = No objection after review (Art. 33, LCart)
 - = Authorisation subject to obligations and conditions
 - ♦ = Sanctions for violating the prior notification requirement
 - ∇ = Notification withdrawn by the parties
 - (∇) = Procedure in progress at 30 June 2000
 - * = Transaction not subject to concentration control (no notification)
- M = Merger; AC = Acquisition of a controlling interest; JV = Joint venture

b) Summary of significant cases

32. **Valora Holding / Melisa**¹⁹. This case involved the acquisition of a distributor of Italian-language books and other publications in the canton of Ticino by a group active in that same business. The Commission deemed that the acquisition had repercussions in two markets: (1) timely supply of Italian- and German-language periodicals to points of sale in Ticino and (2) timely distribution of Italian- and German-language periodicals by points of sale in Ticino. The Commission authorised the transaction after noting that the press distribution market contained elements of a natural monopoly and that the acquisition neither created nor strengthened a dominant position.

33. **Rätia Energie AG**²⁰. In this case, acting within the one-month period of prior review, the Commission authorised the assets of electric power suppliers to be concentrated within a joint venture (Rätia Energie AG). The Commission separated the affected markets into the areas of generation, transmission, distribution and supply of electric power. As for the consequences, the Commission made distinctions between horizontal, vertical and other effects. It identified the harmful effects that could potentially arise from the integration of transmission grids and production capacities but ruled them out in this case, referring in particular to a bill on the electricity market, which called for third-party access. It

should also be noted that the Rätia Energie AG case was the first in which the Commission had analysed a concentration transaction in terms of spill-over effects and ancillary restrictions.

III. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

1. LCart-related activities of the competition authorities

34. One of the essential tasks of the competition authorities is to take part in the legislative process by formulating preliminary opinions, at both the federal and cantonal levels (Art. 46, LCart). In addition, Comco keeps close track of competitive conditions and can make recommendations intended to foster effective competition (Art. 45, LCart). Below is an illustration of these prerogatives.

a) Preliminary opinions

35. **Amendment of the regulation governing the fees of lawyers practising in the canton of Basle-Country²¹**. The proposed amendment had called for a basic hourly rate. If lawyers' fees were calculated as a percentage of the ultimate settlement, they would have to fall within a certain "price range". Increases would be allowed, providing they did not exceed 280 percent of the basic amount. The bill had also included provisions for reducing fees for certain procedures and for early withdrawal of the retainer. Lastly, expenses would have to be calculated according to a fixed tariff, which might tend to limit competition amongst lawyers. Pursuant to its powers under Article 46, paragraph 2 of the LCart, the Competition Commission advised the canton of Basle-Country to opt for a more free-market solution: lawyers' fees should be determined by agreement with the client, taking account of the complexity and scope of the case, the responsibility assumed by the lawyer, the result obtained and the client's financial situation.

36. **Amendment of the Canton of Vaud's Public Health Act²²**. The Canton of Vaud's current Public Health Act theoretically bars health care professionals from advertising. The draft amendment would allow persons licensed to practice to advertise their activities, provided that the advertising was neither excessive nor misleading. The Competition Commission encouraged this, arguing that advertising in the field of health care was necessary because it gave patients more information, enhanced innovation and enabled new health care professionals to make themselves known to the public. Moreover, the drawbacks of advertising in health care were limited not only by the law on unfair competition, under which misleading or false advertising could be prosecuted, but also by medical secrecy, which would prevent health care professionals from engaging in "personalised" advertising.

b) Recommendations

37. None.

2. Domestic Market Act (LMI)-related activities of the competition authorities

38. During the period under review, Comco issued a recommendation (Art. 8, LMI) concerning a draft revision of the Intercantonal Agreement on Public Procurement (AIMP). It did not prepare any expert reports under Art. 10, LMI. Lastly, on several occasions the Secretariat provided information to the cantons

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and communes, concerning public procurement, the principle of non-discrimination and mutual recognition of certificates of capacities.

a) Recommendations (Article 8, LMI)

39. Pursuant to Article 8, paragraph 2 of the LMI, Comco provided the cantonal authorities with a recommendation in the realm of public procurement. The purpose of the proposed AIMP amendment was to incorporate obligations arising from the bilateral agreement on public procurement into the intercantonal agreement. In addition, Comco advocated uniform thresholds, because differences in cantonal procurement could lead to obstacles to free competition.

b) Other

40. For its part, the Comco Secretariat responded to a number of questions about public procurement that had been posed by the authorities or by individuals. For example, it gave opinions to several communes on their proposed public procurement legislation, and issued opinions on particular issues such as contract award procedures, legal procedures and issues involving compliance with legislation on working conditions. In addition, the Secretariat informed the cantons and communes of the implications of a Federal Court ruling on Comco's recommendations of 17 May 1999 on leasing contracts for outdoor advertising. The Secretariat also held a discussion with the cantonal and intercantonal authorities on threshold values for tender procedures in order to formulate a recommendation on the subject. In addition, it supported the work of the Parliamentary Administrative Auditing Office (PAA) to prepare a report on LMI's effects on the domestic market and on the free movement of services and people. This report, along with that of the National Council's Management Commission (established on the PAA assessment), were published on 30 June 2000²³. Lastly, the Secretariat provided information on recognition of "certificates of capacity" and gave its opinion of proposed communal regulations governing taxi services.

IV. Resources of the competition authorities

1. Resources overall

a) Annual budget

41. The total annual budget encompasses expenditure on staff and supplies for Comco and its Secretariat. In 1999, this amounted to SF 4 770 100 (or US\$2 873 554 at the July 2000 exchange rate of SF 1.66 per dollar). The total annual budget for 2000 is SF 4 884 000 (or US\$2 942 168), up some 2.4 percent on the previous year.

b) Number of employees

42. Comco is a decision-making authority made up of 14 members. Case files are prepared by a permanent Secretariat that employs 43 persons: four managers and 39 assistants, including 16 jurists, 15 economists and eight secretaries.

2. *Human resource allocation*

43. Between 1 July 1999 and 30 June 2000, the Secretariat's staff resources were allocated as follows: a) 70 percent to combat anticompetitive practices; b) 20 percent to merger review and enforcement; and c) ten percent for advocacy efforts in the form of advisory opinions or recommendations to the courts in appellate procedures.

V. **Summaries or references to new reports and studies on competition policy issues**

44. The competition authorities publish reports of their activities regularly in the journal *Droit et politique de la concurrence* (DPC).

AMSTUTZ Marc, Begriff der Wettbewerbsabrede im Sinne von Art. 4 Abs. 1 und Art. 5 f. KG: Anwendbarkeit des Kartellrechts auf einseitige vertragliche Konkurrenzverbote?, AJP/PJA 11/1999, pp. 1477ff.

BRECHBÜHL Beat / TRIEBOLD Oliver, Koppelungsgeschäfte marktbeherrschender Unternehmen – Der Fall Microsoft und das schweizerische Verhaltensrecht, AJP/PJA 2000, pp. 27ff.

BELLANGER François / BOVET Christian, Marché de l'affichage public ou marché public de l'affichage?, Baurecht/Droit de la construction 4/1999.

BORNER Silvio, Nationale oder internationale Erschöpfung von Patenten, sic! 4/1999, pp. 476ff.

BORER Jürg, Beurteilung von Verhaltensweisen marktbeherrschender Unternehmen, in: Zäch R. (ed.), Das Kartellgesetz in der Praxis, Zurich 2000, pp. 35ff.

BOVET Christian, Premières expériences dans le contrôle des concentrations, Journée du droit de la concurrence 1998, in: Bovet C. (ed.), Libéralisation des télécommunications. Concentrations d'entreprises, Zurich, 1999, pp. 61ff.

BOVET Christian, Le contrôle des concentrations en droit de la concurrence (II) Procédure, in: Fiches juridiques suisses, Fiche N° 434, Section XIII, prepared in June 1999 (also published in German).

BOVET Christian, Swiss Competition Law 1998-1999, SZW, 2000, pp. 85ff.

BÜRGI Johannes A. / LANG Christoph G., Rettungsanker Patentrecht zum Schutz selektiver Vertriebssysteme in der Schweiz?, sic! 4/1999, pp. 379ff.

CELLI Alessandro L. / KALBERER David M., Abfallentsorgung beim Elektroschrott im Spannungsverhältnis zwischen Umweltrecht und Wettbewerbsrecht – SWICO-Umweltkonvention, sic! 1999, pp. 327ff.

COMTE Jean-Louis, Internationale Erschöpfung der Patentrechte?, sic! 4/1999, pp. 478ff.

COTTIER Thomas / CAPLAZI Alexandra, Marktzugang, Strukturhaltung und Sozialdumping: Ungelöste Spannungsfelder im öffentlichen Beschaffungswesen, in: Forstmoser P. et al. (ed.) Der Einfluss des europäischen Rechts auf die Schweiz. Festschrift für Professor Roger Zäch zum 60. Geburtstag, Zurich, 1999, pp. 257ff.

DIETRICH Marcel, Unternehmenszusammenschlüsse – Formelles Fusionskontrollrecht, Art. 9-10, 32-38 KG, in: Zäch R. (ed.), Das Kartellgesetz in der Praxis, Zurich, 2000, pp. 75ff.

DROLSHAMMER Jens, Entwicklungen im Wettbewerbs- und Kartellrecht, RSJ/SJZ, 2000, pp. 218ff

DROLSHAMMER Jens, Der Stand des schweizerischen Kartellrechts im Jahr 1999: Die Sicht der

SWITZERLAND

- Unternehmen - Ein Plädoyer für eine kooperative und internationalistische Kartellrechts-Community und Kartellrechtskultur in der Schweiz, in: Baudenbacher C. (ed.), *Neueste Entwicklungen im europäischen und internationalen Kartellrecht*, Basle / Geneva / Munich, 2000, pp. 187ff.
- DUCREY Patrik, Abgrenzung zwischen vorsorglichen Massnahmen im Kartellverwaltungs- und Kartellzivilrecht, in: Roger Zäch (ed.), *Das Kartellgesetz in der Praxis*, Zurich, 2000, pp. 115ff.
- GUGLER Philippe, Le traitement de la dominance collective dans le cadre du contrôle des concentrations prévu par la législation suisse sur la concurrence, *Revue de la concurrence et de la consommation*, Paris, No. 113 - January-February 2000, pp. 45ff.
- GUGLER Philippe, Le contrôle des concentrations en Suisse: le cas d'United Bank of Switzerland (UBS), *Revue de la concurrence et de la consommation*, Paris, No. 114 – March-April 2000, pp. 5ff.
- GUGLER Philippe / KRONE-GERMANN Irenka, WTO's Millenium Round: Towards an Integration of Multilateral Competition Rules?, *International Business Law Journal*, No. 2, 2000, pp. 159ff.
- GUGLER Philippe / KRONE-GERMANN Irenka, Cycle millénaire de l'OMC - Vers une intégration de règles multilatérales de concurrence?, in: *Revue de droit des affaires internationales*, No. 2, 2000, pp. 159ff.
- HIRSBRUNNER Simon, Neue Wettbewerbspolitik der europäischen Union gegenüber Vertriebsvereinbarungen - Wie reagiert die Wettbewerbskommission, *AJP/PJA*, 2000, pp. 272ff.
- HILTY Reto M., Verbot von Parallelimporten – Heimatschutz oder Schildbürgerstreich, *sic!* 2000, pp. 231ff.
- HOFFET Franz, Zum Verständnis des Begriffs der Wettbewerbsabreden im Sinne von Art. 4 Abs. 1 und Art. 5f. KG. Bemerkungen zum Entscheid "Engra T" des Bundesgerichts vom 13. November 1998, *sic!* 3/1999, pp. 346ff.
- HOFFET Franz, Unternehmenszusammenschlüsse – Materielles Fusionskontrollrecht, Art. 9-10 KG, in: Roger Zäch (ed.), *Das Kartellgesetz in der Praxis*, Zurich, 2000, pp. 45ff.
- HOFFET Franz / HOEHN Thomas, Zusammenschlusskontrolle im Medienbereich. Anmerkungen zur bisherigen Praxis der schweizerischen Wettbewerbskommission, *sic!* 3/1999, pp. 232ff.
- IMMENGA Ulrich, Zur extraterritorialen Anwendung der europäischen Fusionskontrolle, Forstmoser P. et al. (ed.) "Der Einfluss des europäischen Rechts auf die Schweiz. Festschrift für Professor Roger Zäch zum 60. Geburtstag", Zurich, 1999, pp. 347ff.
- JACCARD Michel, Droit de la concurrence et signature numérique. Quelques réflexions à la lumière de la concentration Swisskey SA, *sic!* 1/1999, pp. 17ff.
- KELLERHALS Andreas, Wettbewerbsrechtliche Aspekte des gemeinschaftlichen Wirtschaftsfolgerechts, Forstmoser P. et al. (ed.) *Der Einfluss des europäischen Rechts auf die Schweiz. Festschrift für Professor Roger Zäch zum 60. Geburtstag*, Zurich, 1999, pp. 359ff.
- KRAUSKOPF-FORERO Patrick, Die Kontrolle von Freizeichnungen im Vertrags- und Wettbewerbsrecht, *Baurecht/Droit de la construction* 1/99, pp. 26ff.
- LANG Christoph G., Die kartellzivilrechtlichen Ansprüche und ihre Durchsetzung nach dem schweizerischen Kartellgesetz, *thèse*, Bern, 2000.
- MEIER-SCHATZ Christian J., Bankenfusionen unter Schweizer Recht, in: Zäch R.(ed.), *Das Kartellgesetz in der Praxis*, Zurich, 2000, pp. 185ff.

- MEISSER David, Parallelimporte und Immaterialgüterrecht, sic! 4/1999, pp. 524ff.
- PALASTHY Andras, Droit des cartels, clause de non concurrence et restrictions accessoires: une jurisprudence critiquable, in: CEDIDAC bulletin d'information No. 31, June 1999.
- PALASTHY Andras, Die Verweigerung der Durchleitung von Strom nach dem Kartellgesetz (KG), AJP/PJA 3/2000, pp. 298ff.
- PALASTHY Andras, Zusammenschlusskontrolle in der Stromwirtschaft: EG- und Schweizer Wettbewerbsrecht, in: Jusletter 19. June 2000 (<http://www.weblaw.ch/jusletter>).
- RAASS Adrian, Zusammenschlusskontrolle im Medienbereich – Kritik an der Kritik, sic! 10/1999, pp. 669ff.
- RAASS Adrian / HÜBSCHER Barbara, Entgegnung zum Beitrag von A.L. Celli und D.M. Kalberer, sic! 1999, pp. 340ff.
- RAASS Adrian / SAURER Markus, Kein Kontrahierungszwang im Parfumhandel – ein Entscheid des Handelsgerichts Zürich ökonomisch durchleuchtet, sic! 5/1999, pp. 586ff.
- RAASS Adrian / KUMMER Christoph, Simulation von Unternehmens-zusammenschlüssen: Theorie und Praxis, AJP/PJA 3/2000, pp. 360ff.
- REYMOND Jean-Marc, Tarifs et indications en matière d'honoraires: quelle influence sur la concurrence?, in: Revue de l'avocat 10/1999, pp. 4ff.
- RICHLI Paul, Verfahren und Rechtsschutz, in: Zäch R. (ed.), Das Kartellgesetz in der Praxis, Zurich, 2000, pp. 130ff.
- RUFFNER Markus / AMMANN Jürg M., Kartellrecht und Stromlieferverträge, sic! 4/1999, pp. 470ff.
- SAURER Markus, Kartellgesetzliche Intervention oder Deregulierung? – Die Wahl zwischen imperfekten Alternativen bei der Fusion Bell-SEG, in: Zäch R.(ed.), Das Kartellgesetz in der Praxis, Zurich, 2000, pp. 167ff.
- STOECKLI Hubert, Ansprüche aus Wettbewerbsbehinderung, thesis, Fribourg, 1999.
- STOFFEL Walter A., Unzulässige Wettbewerbsabreden, in: Zäch R. (ed.), Das Kartellgesetz in der Praxis, Zurich, 2000, pp. 19ff.
- STOFFEL Walter A./ DEISS Joseph (ed.), La décartellisation en Suisse: influences européennes, Fribourg, 1999.
- VALLENDER Klaus A., Grundzüge der "neuen" Wirtschaftsverfassung, AJP/PJA 6/99, pp. 677ff.
- VEIT Marc D., Die Simulation von Unternehmenszusammenschlüssen als Alternative zur strukturellen Marktanalyse, AJP/PJA 10/1999, pp. 1269ff.
- VOGT Hans-Ueli, Auf dem Weg zu einem Kartellverwaltungsverfahren, in: AJP/PJA, 1999, pp. 837ff.
- VON BALLMOOS Thomas, Marktbeherrschende Stellung und Möglichkeit der Beseitigung des wirksamen Wettbewerbs – Zwei Kriterien im Verfahren der Prüfung von Unternehmenszusammenschlüssen oder zweimal dasselbe?, AJP/PJA 3/99, pp. 295ff.
- VON BÜREN Roland, Neue Entwicklungen im Wirtschaftsrecht: Kartellrecht, in: Jusletter of 5 June 2000 (<http://www.weblaw.ch/jusletter>).
- VON BÜREN Roland / KINDLER Thomas, Das schweizerische Kartellrecht, in: Koller et al. (ed.) Schweizerisches Bundesverwaltungsrecht, Bern, 1999.

SWITZERLAND

WAGNER Manfred, Das Bundesgesetz über den Binnenmarkt (BGBM), in: Koller et al. (ed.) Schweizerisches Bundesverwaltungsrecht, Bern, 1999.

ZÄCH Roger (ed.), Towards WTO Competition Rules”, Bern, 1999.

ZÄCH Roger, Einzelfragen der Kartellrechtspraxis, in: Zäch R. (ed.), Das Kartellgesetz in der Praxis, Zurich, 2000, pp. 1ff.

ZÄCH Roger, Parallelimporte im Patentrecht: Kartellrechtliche Sicht, sic! 4/2000, pp. 275ff.

ZURKINDEN Philipp, Die Regelung der Fusionskontrolle im schweizerischen Wettbewerbsrecht, in: Koller et al. (ed.), Schweizerisches Bundesverwaltungsrecht, Bern, 1999.

ZURKINDEN Philipp, Sollen nationale oder supranationale Wettbewerbsbehörden, sowohl im Untersuchungs- als auch im Entscheidstadium, von der politischen Gewalt völlig unabhängig sein? Bejahendenfalls, wie kann eine solche Unabhängigkeit gesichert werden?, sic! 1/2000, 62.

NOTES

1. DPC 2000/2, pp. 167 ff.
2. DPC 2000, forthcoming.
3. DPC 1999/3, pp. 415 ff.
4. DPC 2000/1, pp. 25 ff.
5. *Feuille Fédérale* of 30 May 2000, p. 2826.
6. DPC 1999/3, p. 375.
7. DPC 2000/2, pp. 186 ff.
8. To read about the activities of the Price Monitoring Office, see DPC 1999/5.
9. DPC 1999/5, pp. 760 ff.
10. DPC 1999/5, pp. 772 ff.
11. DPC 1999/3, pp. 495 ff.
12. DPC 1999/3, pp. 497 ff.
13. DPC 1999/3, pp. 501 ff.
14. DPC 1999/4, pp. 618 ff.
15. DPC 1999/3, pp. 503 ff.
16. DPC 2000/1, pp. 100 ff.
17. This law ensures that any legal entity having its head office or establishment in Switzerland shall have free and non-discriminatory market access in order to do business throughout Switzerland (Art. 1, par. 1, LCart).
18. ATF 126 III 213, reproduced in DPC 2000/1, pp. 122 ff.
19. DPC 1999/3, p. 468.
20. DPC 2000/2, pp. 235 ff.
21. DPC 1999/4, pp. 616 ff.
22. DPC 2000/1, pp. 97 ff.
23. These documents are available from the Management Commissions secretariat and the Management Commissions delegation, 3003 Bern [tel. +41 (0)31/ 322 97 13; fax: +41 (0)31/ 322 98 66].