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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWITZERLAND**

-- 2014 --

**27-28 October 2015**

*This report is submitted by Switzerland to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.*

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<sup>1</sup> This is a shorter version of the annual report. The full length annual report is available in French, German, Italian and English on our Website [www.comco.ch](http://www.comco.ch).

## 1. Foreword from the President

1. Alongside the main task of the competition authorities, which is to expose and prohibit unlawful restraints of competition in individual cases, they are also called upon to act as advocates for fair competition in general. The competition authorities' advocacy activities are far less familiar to the general public than their decisions in specific cases. In order to explain this task of the competition authorities in proper detail, the priority theme in this year's annual report is the competition authorities' role as advocates.

2. The advocacy instruments available to the competition authorities under the Cartel Act (consultation proceedings, office consultation procedures, expert reports, and public relations, not to mention the market monitoring procedures and the advisory services provided by the Secretariat) are largely informal. They allow the Competition Commission and the Secretariat to raise awareness of restraints of competition, to point out unnecessary restraints imposed by the state, to answer questions of competition law in an expert capacity and to provide general information on their activities and on the vital economic importance of competition. The competition authorities fulfil the same task in relation to cantonal restrictions on market entry using the instruments provided by the Internal Market Act (IMA) (recommendations, investigations, expert reports and explanatory reports). In practical terms, advocacy activities have become an important instrument that brings concrete results in pro-actively preventing restraints of competition.

3. The most effective advocacy instrument has been and remains the prompt public announcement of decisions by the Competition Commission and their publication in full. The sanctioning of a bidding cartel or of a company that has prevented parallel imports into Switzerland, and the publication of the related decisions, naming the companies concerned and giving details of the fines they have received in the mass media, not only has a powerful deterrent effect but also raises awareness among businesses and consumers. The end result is that decisions become easier for the companies concerned to understand and it is simpler for the competition authority to explain the aims and objectives of any intervention by the Competition Commission and the consequences of disrupting competition by citing the examples of specific cases and decisions.

4. In the past year, the competition authorities again issued clear and concise decisions and began new proceedings. The sanctioning of the Swiss Press Agency (Schweizerische Depeschagentur, SDA) for squeezing out a competitor or the opening of new investigations into the manipulation of competition in foreign exchange dealing and in the car leasing business are examples of this.

5. The revised Cartel Act failed to pass through parliament in September 2014. Although the draft of the revised Act contained elements, such as the partial per se prohibition of cartels or the modernisation of the merger control procedure, which would have increased legal certainty and made the work of the competition authorities easier, from the point of view of the Competition Commission, the failure was not entirely bad news: the current Cartel Act contains the instruments required to expose and prevent restraints of competition and the competition authorities basically function well. This was established when the Cartel Act was evaluated in 2009 and nothing substantial has changed to alter this finding. As a result, the competition authorities will continue to fulfil their statutory tasks by issuing their decisions and through their targeted advocacy.

Prof. Dr. Vincent Martenet  
President Competition Commission

## 2. Most important decisions in 2014

6. In a ruling dated 30 June 2014, the Competition Commission concluded its investigation into **Jura Elektroapparate AG** (Jura). Jura had entered into an agreement with its sales partners that prohibited them from selling Jura coffee machines on the internet. In line with the landmark decision of 11 July 2011 by the Competition Commission on online trading (Electrolux AG/V-Zug AG), Jura undertook in principle under an amicable settlement to allow the selective sale of coffee machines by authorised retailers via the internet.

7. In a decision dated 14 July 2014, the Competition Commission approved an amicable settlement between its Secretariat and the **Swiss Press Agency** (Schweizerische Depeschagentur AG (SDA)), while at the same time imposing a sanction of CHF 1.88 million on the SDA. Under the amicable settlement, the SDA agreed not to enter into any more exclusivity agreements with its clients. In addition, the SDA will apply a transparent system of rebates, as well as granting various media non-discriminatory access to its services. This should ensure that the SDA treats all media in Switzerland in the same way, thus not distorting competition in the downstream media and advertising markets. The investigation had revealed that in the period from the end of 2008 to the beginning of 2010, the SDA concluded subscription agreements involving exclusivity discounts with selected media conglomerates in German-speaking Switzerland. These rebates were subject to the condition that the media concerned would take the basic news service exclusively from the SDA and not subscribe to the corresponding service from AP Switzerland at the same time. By granting exclusivity discounts, the SDA had abused its dominant position and obstructed its competitor at that time, AP Switzerland, in an unlawful manner.

8. In spring 2009, the Competition Commission began an investigation into **ETA SA Manufacture Horlogère Suisse** (ETA) in response to various complaints. The allegations were that ETA discriminated against customers outside its group by imposing higher prices and different supply terms when compared with Swatch Group companies. The investigation was suspended from June 2011 to November 2013 while enquiries were made into a phased-in reduction in supplies of mechanical watch movements. The Competition Commission terminated the investigation into ETA with a decision dated 14 July 2014, as there was insufficient evidence that ETA's conduct was discriminatory or inappropriately motivated. This was essentially because both the increases in prices and the changes in conditions of sale were applied consistently to all customers. In addition, in a decision dated

9. 21 October 2013, the Competition Commission approved an amicable settlement regulating the phased-in reduction in supplies of mechanical watch movements. This also included provisions on price and sale conditions that will apply until ETA's obligation to supply expires on 31 December 2019. In a ruling dated 8 August 2014, the Competition Commission, or more precisely one of its vice-presidents, approved the amicable settlement between its Secretariat and **AMAG Automobil- und Motoren AG** thus concluding the proceedings relating to this company. The investigation, opened in May 2013, related to possible agreements affecting competition and was directed towards various Swiss dealers in Volkswagen Group brands, in particular VW, Audi, Skoda and Seat; AMAG was one of the dealers concerned. The investigation focused on the allegation that discounts and delivery charges in retail sales of new vehicles of the brands in question were fixed. In the amicable settlement, AMAG undertook not to apply agreements on the fixing of discounts and delivery charges and not to exchange price-relevant information with its competitors. As AMAG had made a voluntary report of its own conduct, no sanction was imposed. The other parties to the proceedings have appealed against the decision.

10. In a judgment dated 23 September 2014, the **Federal Administrative Court** overruled the rulings and sanctions that the Competition Commission had issued against SFS unimarket AG, Siegenia-Aubi AG and Paul Koch AG on 18 October 2010. The companies had agreed on the amount and timing of price increases for window fittings at a meeting on 22 September 2006; the

Competition Commission held this to be an unlawful price-fixing agreement. In its judgment, the court essentially concludes that the question remained unanswered of whether the restraint of competition brought about by the agreement reached at the said meeting was the “sole cause” of a horizontal price-fixing agreement between the companies, or whether the agreement was due to the pricing requirements imposed by EU manufacturers, or indeed to both factors. As a consequence, it was not proven that the companies could be accused of entering into an unlawful price-fixing agreement under Art. 5 para. 3 lit. a Cartel Act. At the request of the Competition Commission, the Department of Economic Affairs, Education and Research (EAER) has filed a public law appeal in the Federal Supreme Court against two of the three judgments.

11. The investigation into **door products** was concluded in a decision dated 17 November 2014. The Competition Commission imposed sanctions amounting to CHF 185,000 on five Swiss companies trading in door fittings (door locks, handles and hinges), while exempting one company from any sanction at all, as it had initially reported itself voluntarily to the competition authorities. The Competition Commission terminated the investigation into the manufacturer without taking any action, as it was unable to prove any breach of competition law. In this case, five companies trading in door fittings met every year from 2002 to 2007 in order to agree to adhere to minimum margins when selling large volumes of door fittings. One further company attended the annual cartel meeting in 2007. This type of price-fixing agreement constitutes a hard horizontal cartel.

12. The Competition Commission concluded its investigation into the credit card market on 1 December 2014 with an amicable settlement. This provides for a reduction in the average **interchange fee for the credit cards** from MasterCard and Visa from 0.95% to 0.44%. All the parties involved in the investigation have signed the amicable settlement. These are on the one hand the companies that issue the credit cards and on the other the companies that persuade retailers to accept credit cards and enter into the corresponding contracts with them (the acquirers). The reduction relates to the interchange fee that applies in Switzerland. This is the fee that the acquirer must pay to the issuer when payment is made using a Swiss credit card at a Swiss retailer. The Competition Commission concluded back in 2005 that these interchange fees constitute an agreement restricting competition, as they are fixed and applied jointly by the companies concerned. The Competition Commission assumes, however, that this agreement restricting competition may be justified if the fees are so low that it is no longer an issue for retailers whether payment is made in cash or by credit card. The reduction in the fee will take place in two stages: an initial reduction will be made on 1 August 2015 to 0.7%, and the second on 1 August 2017 to 0.44%. When compared with the situation at the end of 2014, this means that retailers will pay around CHF 50–60 million less each year. The proceedings and the amicable settlement did not consider debit cards, and in particular the Maestro system, which works without charging an interchange fee.

### **3. Activities in Individual Sectors**

#### **3.1 Construction**

##### **3.1.1 Bid rigging**

13. In August 2014, the Secretariat concluded the preliminary investigation opened in 2013 into reporting systems used by cantonal building contractors’ associations. The Secretariat examined whether and if so, which building contractors’ associations use such reporting systems. It analysed their effect and reached the conclusion that they encourage bid rigging by construction companies and can adversely affect competition. Accordingly, the Secretariat urged building contractors’ associations *inter alia* to make sure that participant companies are no longer able to use the reporting system to find out before the deadline for bids which other companies are submitting an offer. Based on the proposals, the cantonal building contractors’ associations have either adapted their reporting systems or stopped using them. On 30 October

2012, the Secretariat began the **Lower Engadin construction** investigation into various companies in the sector for road construction and civil engineering, surfacing work and building construction, as well as related upstream markets, and conducted unannounced inspections. The Secretariat had received indications that several companies had entered into agreements to coordinate the award of contracts and to allocate construction projects and customers. Based on the results of these enquiries, the investigation was expanded on 22 April 2013 to include further companies and to cover the entire **Canton of Graubünden**. Once again, unannounced inspections were carried out.

14. On 5 February 2013, the Secretariat opened the **tunnel cleaning** investigation into three companies active in various regions and carried out unannounced inspections. The Secretariat had received indications that the companies had entered into price-fixing agreements in violation of competition law in order to coordinate the allocation of contracts and customers. The Secretariat evaluated the seized documents and bids and conducted a comprehensive market survey of the authorities responsible for awarding tunnel cleaning contracts. In November 2014, the Secretariat sent its draft decision for the Competition Commission in terms of Art. 30 para. 2 Cartel Act to the parties for their comments.

15. On 15 April 2013, the Secretariat opened the **Bauleistungen See-Gaster** investigation into six companies in the road construction and civil engineering sector by conducting unannounced inspections. The Secretariat had received indications that several companies had entered into agreements to coordinate the award of contracts and allocate construction projects and customers. On 21 October 2013, the Secretariat extended the investigation to include two further companies in the target region and again carried out unannounced inspections. Evaluation of the seized data has been completed. The parties were allowed to inspect the case files in December 2014.

16. As explained in the section on advocacy (see 5. below), raising awareness among procurement agencies is an important instrument in the fight against bid rigging. In 2014, awareness campaigns were carried out in the cantons of Basel Stadt and Basel Land, Bern, Glarus, Lucerne, Schaffhausen, Solothurn, Thurgau and Zurich. In addition, the Secretariat held various related meetings, gave a number of presentations and took part in podium debates for audiences such as businesses, lawyers and government agencies.

### *3.1.2 Other proceedings*

17. In the investigation opened on 22 November 2011 into wholesalers of sanitary facilities, the Secretariat submitted its draft decision and the comments of the parties thereon to the Competition Commission in November 2014.

18. In a decision dated 17 November 2014, the Competition Commission fined the members of a suppliers' cartel in the **door products** sector. Five Swiss companies trading in door handles, locks and hinges (door fittings) met each year from 2002 to 2007 in order to agree to adhere to minimum margins for large volume sales of door fittings. One other company attended the annual cartel meeting in 2007. The agreed minimum margins related to products manufactured by the company Glutz AG and were intended to apply when selling fittings to door makers (e.g. joinery firms). The Competition Commission held this agreement to be unlawful and sanctioned the retailers with fines totalling CHF 185,500. The Competition Commission dropped the proceedings against the manufacturer Glutz AG, as it was not possible to prove that the company had breached competition law.

19. Following the two investigations into bid rigging in the **road construction and civil engineering sectors in the canton of Aargau and the canton of Zurich**, several public sector clients requested access to the case files, particularly with regard to the contracts they had awarded (the individual projects affected by the agreements are not disclosed or not specifically named in the published versions of the rulings). On

6 August 2014, the Competition Commission suspended the procedure concerning access to files in the investigation into road construction and civil engineering in the canton of Aargau, because this case is still ongoing before the Federal Administrative Court. On 8 September 2014, the Competition Commission decided on whether to grant access to the case files related to the investigation into road construction and civil engineering in Zurich (partial access to the case files was granted). Two of the companies concerned have appealed to the Federal Administrative Court against the decision to grant only partial access to the files.

20. The three appeals against the Competition Commission rulings relating to builders' supplies for windows and French doors were granted by the Federal Administrative Court in September 2014. Following a detailed review of these decisions, the Competition Commission and the EAER have appealed two of the three judgments (Paul Koch AG; Siegenia Aubi AG) to the Federal Supreme Court. In the view of the Federal Administrative Court in both of its judgments, it was not proven beyond doubt that a price-fixing agreement had been reached. On this point, the Competition Commission claims that there has been a violation of federal law, because the Federal Administrative Court is applying excessively strict legal requirements for proving the existence of horizontal price-fixing agreement (cartel). In the Competition Commission's opinion, the "unanswered questions of evidence" raised by the Federal Administrative Court with regard to a price-fixing agreement do not exist. In the judgment in the case of SFS AG, the Competition Commission decided against an appeal, because the issue of whether SFS took part in the price-fixing agreement in question, which the Federal Administrative Court answered in the negative, cannot be contested before the Federal Supreme Court as it is a question of fact.

### 3.2 *Services*

#### 3.2.1 *Financial services*

21. In the financial services sector, the investigation relating to credit card interchange fees was successfully concluded in an amicable settlement approved by the Competition Commission on 1 December 2014. The amicable settlement provides for a reduction in the domestic interchange fees from the current 0.95% to 0.44%. The Competition Commission concluded in its first investigation back in 2005 (see RPW 2006/1, p. 65 ff.) that these interchange fees constitute an agreement restricting competition, as they are jointly fixed and applied by the companies concerned. The Competition Commission however held that this agreement restricting competition may be justified if the fees are so low that it is no longer an issue for retailers whether payment is made in cash or by credit card, i.e. if the retailers are indifferent as which means of payment is used. This "Merchant Indifference Test" (also known as the "Tourist Test") has a sound basis in scientific research as set out in a publication by this year's winner of the Nobel Prize for Economics, Jean Tirole<sup>2</sup>. The amicable settlement was signed by all the subjects of the investigation, i.e. all the issuers and acquirers. It provides for the reduction in interchange fees to take place in two stages: an initial reduction on 1 August 2015 to 0.7%, and a second reduction on 1 August 2017 to 0.44%. Termination of the amicable settlement becomes possible for the first time on 1 August 2019. The amicable settlement also contains a dynamic adjustment mechanism: increases or reductions in the EU upper limit for interchange fees for credit cards of 0.3% will be applied in Switzerland at exactly the same level (e.g. if the rate in the EU is reduced to 0.2, this would result in a reduction in Switzerland to 0.34%). The dynamic adjustment mechanism is intended to ensure that the amicable settlement will continue to apply in the long term. Lastly, the ban on the "Non-Discrimination Rule" (NDR), introduced in 2005, was lifted. This means that acquirers again have the option of including a clause in their agreements with retailers that prohibits the retailers from

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<sup>2</sup> JEAN-CHARLES ROCHET/JEAN TIROLE, Must-take cards: Merchant discounts and avoided costs, in: Journal of the European Economic Association, 9(3), p. 462 ff., 2011.

setting different prices for different methods of payment. The lifting of this ban is related to the major reduction in the interchange fees, which should mean that retailers will not incur additional costs for accepting credit cards rather than cash payments.

22. Finally, the Secretariat continued to make progress with its investigation into agreements to influence the reference interest rates **Libor**, **Tibor** and **Euribor**, as well as derivatives based on these rates. In this investigation, the competition authorities have also for the first time requested mutual legal assistance in civil and commercial matters from France, based on the Hague Convention (see RPW 2014/2, p. 450 ff.). The French Ministry of Justice has approved the request and passed it on to the French courts for a decision to be made.

23. In the report year, two further investigations connected with financial services were begun. The first investigation, opened on 31 March 2014 and relating to currency trading (Forex) will examine whether various banks have concluded unlawful agreements relating to fixing various exchange rates. The possible practices include the following in particular: exchanging confidential information, general coordination of transactions with other market participants at agreed price levels, coordinated activities to influence the WM/Reuters Fix, and coordinating the purchase and sale of foreign exchange.

24. The second investigation relates to automobile leasing. The investigation was opened because of indications that finance companies belonging to manufacturing groups or importers (known as “captive banks”) may have exchanged sensitive information relating to leasing rates and the financing of vehicles, and thus may have entered into price-fixing agreements. More specifically, it is suspected that the captive banks have exchanged information relating to interest rates, contractual conditions, the level of commission paid to car dealers and various other outlays.

### 3.2.2 *Liberal professions and professional services*

25. A preliminary investigation into maintenance and support services for network devices from Cisco Systems was successfully concluded after assurances were given relating to changes to communications made to end customers. The background to this preliminary investigation was a report made by provider of maintenance and support services independent from Cisco, alleging that Cisco Systems held a dominant position in relation to certain network devices, in particular routers and switches, which it was abusing in that operating system updates could only be obtained as part of comprehensive maintenance and support packages. In the course of the preliminary investigation, Cisco Systems demonstrated various options for end customers to purchase obtain operating system updates, or in some cases obtain them free of charge, without having to purchase other maintenance and support services from Cisco Systems. In addition, Cisco Systems in principle allows the transfer of operating system-software licences between end customers – either directly or via third parties – within the European Economic Area and Switzerland. As Cisco Systems confirmed the foregoing matters in writing and at the same time expressed its willingness to implement a series of measures related to its communications to end customers, it was possible to terminate the preliminary investigation.

26. Considerable progress has been made in the ongoing investigation into Booking.com, Expedia and HRS in a case involving online booking platforms for hotels, which focuses in particular on the contractual terms that these companies impose on their partner hotels. In connection with this investigation, the Federal Administrative Court had to rule on whether a hotel industry association is entitled to party status, which would in particular confer the right to inspect the case files. In a judgment dated 1 July, the Federal Administrative Court ruled against this and thus upheld a related interim ruling by the Secretariat. Interviews with the parties were also held in the report year.

### 3.2.3 *Health care*

27. The Competition Commission has filed an appeal against the decision of the Federal Administrative Court in the case relating to off-list medicines. The judgment of the Federal Administrative Court is of fundamental importance, because it holds that the Cartel Act does not apply in this area, which in the view of the competition authority is incorrect.

28. In the investigation relating to the commercialisation of electronic medical information required for the distribution, supply and billing of medicines in Switzerland, parliament is currently debating medical information in connection with Art. 57a of the Therapeutic Products Act (RS 812.21), which is currently being revised. The fundamental issue is whether the Medicinal Product Information System (AIPS) set up by Swissmedic will continue to be the reference for publishing medical information or if this task should be taken over by the pharmaceutical companies in cooperation with the service providers.

29. In the preliminary investigation relating to the level of competition at all levels involved in the distribution of medicines in Switzerland, the activities of pre-wholesalers (PWS), i.e. of the companies who offer of the warehousing services to pharmaceutical companies that want to out-source this type of activity, was the focus of investigations. The distribution of medicines in Switzerland is notable on the one hand for the virtual impossibility of parallel imports of medicines, and on the other for increasing vertical integration in the distribution of medicines. In this context, certain financial services (e.g. acceptance of del credere agents) by the PWS are the subject of a special examination.

30. In relation to the hospital sector, the courts have taken certain key decisions in favour of competition. First of all, the Federal Administrative Court held that under the current financing system, hospitals should also be able to operate for profit under the system of basic health insurance, which is essential if the indirect competition that parliament wants is to have a positive effect. The competition authorities have also defended this view on a number of occasions. Secondly, the cantons are required to respect certain principles in relation to the intercantonal planning of highly specialised medicine. As the Competition Commission stressed in its opinion on the hospital planning, these principles must firstly guarantee the equality of treatment of public and private establishments and secondly that a method of selecting providers is applied that ensures that the system encourages competition.

## 3.3 *Infrastructure*

### 3.3.1 *Telecommunications*

31. At the request of the Federal Council, the Competition Commission prepared an expert report on proposed amendments to the Ordinance on Telecommunications Services (OTS) and commented on a number of controversial issues from the point of view of competition policy, such as the effect on investment incentives of the proposed regulation of the last mile, the intended introduction of the ban on a margin squeeze as a specific measure to prohibit discrimination in the sector, and the structure of a “glide path” when taking account of more efficient technologies, for example in interconnection or in relation to access to leased lines.

32. In the investigation into Swisscom relating to the provision of broadband internet to business customers, the Secretariat concluded its enquiries in December 2014 by sending its proposed decision under Art. 30 para. 2 Cartel Act to Swisscom for comment.

33. In the telecommunications sector, the Competition Commission also had to assess the merger between Swisscom Directories AG and Search.ch AG. In this case, Swisscom and Tamedia, following the takeover of Publigroupe SA, are planning to merge its subsidiaries local.ch and search.ch

into a joint subsidiary undertaking. The Competition Commission's preliminary investigation at the end of November 2014 revealed that the merger may establish or increase a dominant position in relation to address directories. Accordingly, the planned merger will be the subject of an investigation under Art. 10 Cartel Act, which will be completed by the end of March 2015.

34. In addition, the Competition Commission prepared an expert report at the request of OFCOM on the issue of whether Swisscom holds a dominant position in the field of IP interconnection. IP interconnection guarantees the connection of computers linked via the Internet.

35. In the appeal proceedings before the Federal Administrative Court in the case relating to ADSL pricing policy, the Competition Commission expressed its views on a list of questions that Swisscom had answered as part of a further exchange of submissions.

### 3.3.2 *Media*

36. In a decision dated 14 July 2014, the Competition Commission concluded the investigation into the Swiss Press Agency (Schweizerische Depeschagentur (SDA) relating to pricing policy and other practices, and approved an amicable settlement between the Secretariat and the SDA. The investigation disclosed that from the end of 2008 to the start of 2010, the SDA had concluded subscription agreements with exclusivity discounts with selected media firms in the German-speaking part of Switzerland. These discounts were tied to the condition that the media firms concerned would obtain their basic news service exclusively from the SDA and would not subscribe to a corresponding service from a rival agency at the same time. In this way, the SDA had abused its dominant position and had thus unlawfully prevented its rivals from competing. In the amicable settlement, the SDA undertakes not to enter into any further exclusivity agreements with its customers. In addition, the SDA undertakes to apply a transparent system of rebates and to grant the various media companies non-discriminatory access to its services. This should ensure that the SDA treats all media firms in Switzerland equally, thus not distorting competition in the downstream media and advertising markets. The SDA was ordered to pay a sanction of CHF 1.88 million.

37. The investigation into the broadcasting of live sport on Pay-TV, opened in April 2013, made little progress in the report year largely as a result of various interim decision proceedings instigated by the parties and subsequent appeals against these decisions. The appeal filed by the cable network operators relating to the request for interim measures with regard to the liberalisation of certain programme content and purchasing options was rejected by the Federal Administrative Court in a legally binding judgment dated 9 July 2014. In a judgment dated 2 October 2014, the Federal Administrative Court declined to consider the appeal relating to the ruling of 24 February 2014 on the matter of party status. This judgment has been appealed to the Federal Supreme Court.

38. The preliminary investigation into the Goldbach Group's TV/radio marketing was concluded with a final report dated 12 November 2014. This was possible primarily because the Goldbach Group gave the Secretariat a letter of undertaking relating to the future conduct of its subsidiaries when marketing or arranging TV and radio advertising airtime. In the letter of undertaking, the Goldbach Group confirmed that its subsidiaries, when selling TV and radio advertising airtime, will not make discounts or free space dependent on booking all or the majority of the advertising volume in any other media form (TV, radio, adscreen, online etc.) via a company in the Goldbach Group.

39. In 2014, the Competition Commission was also called on to assess several company mergers in the media sector: in the merger planned between Tamedia AG and the B2C division of Ticketportal AG, Tamedia reported its intention to take over the B2C division of Ticketportal via its subsidiary Starticket AG. In the case of Aurelius / Publicitas, Aurelius AG planned to take over the

activities of Publigroupe in the field of media sales. In the case of Ringier / Le Temps, Ringier AG planned to acquire sole control of HE Publishing SA; this would result in Ringier having the sole control of Le Temps SA. In the case of Thomas Kirschner / Valora Mediaservices AG, Thomas Kirschner announced its intention to acquire indirect control of the Swiss press wholesaler Valora Mediaservices AG via its subsidiary Brillant Media Services GmbH. Subsequently, Thomas Kirschner / A and B XY / Valora Mediaservices AG reported the acquisition of joint control of Valora Mediaservices AG by Thomas Kirschner and the spouses XY – the latter via ATLAS Beteiligungen GmbH & Co. KG. In the case of Swisscom (Switzerland) AG / Publigroupe SA, Swisscom announced its intention, as part of a public takeover bid, to gain the sole control of the Publigroupe group of companies. In the case of Tamedia/home.ch, Tamedia planned to take over the sole control of the home.ch division. In relation to all these cases, the Competition Commission approved the mergers following a provisional assessment.

40. Following on from the merger proceedings in the case of Ringier/Le Temps, the Competition Commission in a ruling dated 8 September 2014 also lifted the conditions imposed by its decision of 20 October 2003 in the case of Edipresse/Ringier – Le Temps. The conditions were imposed due to the joint control of Ringier and Tamedia over HE Publishing and thus Le Temps, in order to guarantee the independence of Le Temps and to be able to control the effects of the cooperation in other media markets. With Ringier taking over sole control of Le Temps, the conditions were no longer required and thus had to be lifted.

41. Appeals have been filed in the Federal Administrative Court against the Competition Commission's ruling relating to book pricing in the French-speaking part of Switzerland. Also in dispute in this case was the extent to which the ruling of 27 May 2013 can actually be published. The parties concerned have filed an appeal in the Federal Administrative Court against the related Competition Commission decision.

### 3.3.3 *Energy*

42. The preliminary investigation into the ewb ownership strategy was concluded with a final report dated 10 January 2014. Following a meeting with the Secretariat in December 2013, ewb voluntarily made changes to resolve three potentially problematic competition law issues (written request to conduct a regular check of electrical installations, recommending its subsidiary Energie-Check Bern AG for safety checks on the ewb website, recommending in the ewb customer circular that its subsidiary [at the time] Bären Elektro AG should consolidate multiple electricity meters in buildings that are vacant). As a result, when the time came for an assessment, there were insufficient indications of an unlawful restraint of competition under Art. 7 Cartel Act in connection with the possible exchange or use of commercially relevant information between the monopoly and competitive sectors of the ewb Group.

43. In the electricity sector, the Secretariat and the Competition Commission were again called upon on several occasions to provide expert reports as part of office consultation proceedings and legislative consultation proceedings and hearings respectively. Worth mentioning here are the federal decree on the second phase of the liberalisation of the electricity market and various partial revisions of the Energy Ordinance.

### 3.3.4 *Other sectors*

44. In the report year, various parties appealed to the Federal Administrative Court against the ruling of 2 December 2013 that concluded the investigation into air freight and which imposed fines totalling around CHF 11 million on 11 airlines for horizontal price-fixing agreements. In this case, there is also a dispute over whether and to what extent the ruling of 2 December 2013 should be published. Proceedings are also pending before the Federal Administrative Court in relation to this.

45. Significant progress was made with the investigation into the business customer pricing system for letter post services, which was opened in July 2013. In particular, the investigation is looking into the question of whether Swiss Post structured and applied its pricing system so as to obstruct competitors in the market, for example by making it difficult or even impossible for business customers to obtain services from Swiss Post competitors. In addition, it will be assessed whether Swiss Post discriminated against certain customers or otherwise placed them at a disadvantage.

### **3.4 Product markets**

#### *3.4.1 Consumer goods industry and retail trade*

46. In a ruling dated 30 June 2014, the Competition Commission concluded its investigation into Jura Elektroapparate AG (Jura). The Competition Commission approved an amicable settlement in which Jura undertook in principle to allow its sales partners to sell its products online. In return, the Competition Commission terminated its investigation into Jura. An agreement had existed between Jura and its sales partners in which they undertook not to sell Jura coffee machines online. In accordance with the Competition Commission's landmark decision of 11 July 2011 on online trading (in the case of Elektrolux AG/V-Zug AG), Jura gave a formal commitment in principle under the amicable settlement to allow the selective sale of coffee machines by authorised retailers on the internet. In relation to restrictions that Jura placed on warranty services and its pricing policy, indications of an unlawful restraint of competition that had initially existed were not substantiated. On these matters, the Competition Commission also terminated proceedings.

47. The Secretariat largely concluded its enquiries in two investigations relating to musical instruments. One investigation related to pianos, including grand pianos. This was opened on 27 November 2012 as there were specific indications of horizontal and vertical price-fixing agreements, agreements relating to the foreclosure of sales territories and the obstruction or prevention of parallel and direct imports from neighbouring countries. The second investigation related to stringed instruments (guitars and basses) and accessories and was opened on 3 July 2013. This investigation aimed in particular to examine whether vertical price-fixing agreements had been reached relating to sales of guitars and accessories.

48. In connection with vertical agreements, at the end of 2014 the following appeals against Competition Commission decisions were pending before Federal Administrative Court: Nikon, BMW, Alpine sports products/Roger Guénat SA. The Federal Administrative Court rejected the appeal in the case of GABA/Elmex in a judgment dated 19 December 2013. The case is now pending before the Federal Supreme Court.

49. On 21 August 2014, the Secretariat opened a preliminary investigation under Art. 26 Cartel Act in relation to imports of Coca-Cola products by retailers in Switzerland. It is investigating whether Coca-Cola prevented parallel imports by Denner and other consumers in Switzerland and thus infringed Art. 5 and/or 7 Cartel Act.

50. In relation to wheeled suitcases, the Secretariat dealt with allegations of the foreclosure of territories and price fixing agreements in its preliminary investigation. The investigation focuses on the prevention of cross-border online trading.

51. On 3 September 2014, the conditions that the Competition Commission imposed in 2007 in the Migros/Denner merger proceedings all expired, with one exception. The exception relates to the permanent requirement that Migros is basically not permitted to enter into exclusive agreements with its suppliers. The conditions were ordered on the one hand with the aim of ensuring that other operators in the

market could take over Denner's previous role as Migros' most significant fringe competitor. On the other, the conditions were supposed to prevent it becoming more difficult for suppliers to gain access to sales markets. In the Competition Commission's view, the conditions have served their purpose; the conditions were enforced without any significant irregularities.

#### 3.4.2 *Watch industry*

52. At the start of 2014, the Competition Commission, in accordance with the ruling issued in October 2013 in the case of Swatch Group Lieferstopp (termination of supply), appointed the audit company responsible for supervising compliance with the amicable settlement with the Swatch Group in accordance with Section 8 of the settlement. The first review of the conditions will be carried out in spring 2015. In the course of 2014, Secretariat did not receive any complaints that the Swatch Group was not complying with the amicable settlement.

53. In July 2014, the investigation opened in spring 2009 into ETA SA Manufacture Horlogère Suisse (ETA, a 100% subsidiary of the Swatch Group) was concluded. This investigation focused on unilateral changes in prices and changes in the sale conditions for mechanical watch movements that ETA introduced in 2009. The Competition Commission terminated the investigation into ETA, as there was insufficient evidence that ETA's conduct was discriminatory or unlawfully motivated. The investigation was suspended from June 2011 to November 2013 – for the duration of the Swatch Group Lieferstopp investigation.

54. In addition, at the end of October 2014 a preliminary investigation was opened into after-sales services for watches, in which the Secretariat will look into allegations of unlawful practices under competition law by various watch manufacturers.

#### 3.4.3 *Automotive sector*

55. The Secretariat largely concluded its enquiries in the investigation opened on 22 May 2013 into various Swiss concessionaries for Volkswagen Group manufacturers (VW, Audi, Skoda, Seat, AMAG). The investigation focused on possible agreements affecting competition in connection with discounts and delivery charges in the retail sale of new vehicles. In a ruling dated 8 August 2014, the Competition Commission approved the amicable settlement between its Secretariat and AMAG, terminating proceedings against that party. In the amicable settlement, AMAG undertook not to implement agreements on fixing discounts and delivery charges and not to exchange price-relevant information with its competitors. As AMAG had filed a voluntary report, no sanctions were imposed. All the other parties have appealed against the ruling. The investigation continues against the other parties under the ordinary procedure.

56. The Secretariat conducted two preliminary investigations in 2014 into the import of electric vehicles and sales of vehicle spare parts and concluded these without taking further measures. Two new preliminary investigations in connection with the selective sales network of certain automobile suppliers in Switzerland were opened and are still the subject of enquiries.

57. In the course of 2014, the Secretariat received around 50 enquiries from members of the public in connection with guarantees and warranties for vehicles purchased in member states of the European Economic Area and the obstruction of parallel or direct imports, and responded to these by

drawing attention to the competition law treatment of vertical agreements in the automobile trade<sup>3</sup> (MV Notice).

58. In mid-July 2014, the Secretariat consulted interested groups on the future of the Notice on the competition law treatment of vertical agreements in the automobile trade (MV Notice). In November 2014, the Competition Commission held hearings with six trade associations and offered them the opportunity to explain their position orally and to answer questions from Competition Commission members directly. Based on this, the Competition Commission took a policy decision on 15 December 2014 to retain the MV Notice but to modify certain important points. The Secretariat was instructed to prepare a draft revision of the MV Notice. The Competition Commission will probably decide on the revised MV Notice (after hearing interested parties) in the second quarter of 2015, informing the industry at the same time.

#### 3.4.4 *Agriculture*

59. The Secretariat expressed its views in around 30 office consultation procedures on amendments to acts and ordinances as well as on proposals from parliament. The various office consultation procedures in this sector related to regulating frontier protection, in relation to which the Secretariat again called for restrictions to be lifted this year. Examples include the several temporary increases in the partial tariff quota for potatoes requested by Swisspatat. The Secretariat supported each of these quota increases, but called for a permanent increase to be considered and for consumers to be consulted as an interested group when each of the partial tariff quotas is fixed, and not just representatives of producers, distributors and the processing industry.

### 3.5 *Internal market*

60. In relation to intercantonal access to the market, the Competence Centre for the Internal Market (CC IMA) concentrated on two cases relating to legal agents licensed to operate in the canton of Vaud who were seeking access to the market for representing clients in civil proceedings (Art. 68 para. 2 let. b of the Civil Procedure Code [CPC; RS 272]) in the cantons of Bern and Geneva. It also dealt with a case related to dental technicians.

61. Under the Internal Market Act (IMA), service providers are entitled to carry out their activities in other cantons according to the provisions that apply in their place of origin (place of origin principle). Pursuant to this principle, certain licensed legal agents in the canton of Vaud have formally applied for access to the market in the cantons of Geneva and Bern. These two applications were rejected. The Competition Commission appealed against these two negative decisions. As the cantonal courts also rejected these appeals, the Competition Commission has exercised its right of appeal to submit the case to a decision of the Federal Supreme Court.

62. The Secretariat of the Competition Commission was contacted by the professional association for dental technicians in order to discuss difficulties encountered by providers in the market in obtaining education and training, which is not available to technicians as an independent profession (from that of dentists), in the canton of Zurich. The CC IMA also considered the case of a dental technician who wanted to work in this market in a canton that did not recognise his profession. The place of origin principle applies even if the profession does not exist at the place of destination (RPW 2013/4, 522).

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<sup>3</sup> Notice regarding the Competition Law Treatment of Vertical Agreements in the Motor Vehicle Trade (Decision of the Competition Commission of 21 October 2002), see RPW 2002/4, 770

63. In the field of government procurement, the Competition Commission filed two appeals. In the context of government procurement of IT services, a commune in the canton of Zurich made use of the invitation procedure when the market value exceeded the threshold from which the open procedure applies, without an exemption being invoked or the conditions being met. When one bidder appealed, the administrative court in Zurich decided that the appeal was not admissible. Without dwelling on the reason for rejecting the appeal, it should be pointed out that other cantons in identical circumstances overturned all the contract award decisions taken following a wrong choice of procedure. Accordingly, the Competition Commission agreed at the request of the CC IMA to exercise its right of appeal in order to establish whether applying the wrong government procurement procedure is a violation per se of the law on government procurement – and as such of the IMA – which must be determined ex officio, and if need be even against the will of the appellant. In another case, the Competition Commission, having been informed by a canton, appealed against a decision by mutual agreement to award a contract for IT services relating to a land register on the grounds that the awarding authority made its decision when there were reasons for invoking the urgency exception. However, the Competition Commission, just like the canton that had brought the case to its attention, takes the view that the conditions that permit the application of the exceptional clauses are not met. In order to have the question decided by the competent cantonal administrative court, the Competition Commission has exercised its right of appeal.

64. During the year under review, the Competition Commission was also called on to issue recommendations in the field of government procurement. One case concerned the limited company saint-galloise VRSG and was a response to the question of whether the company was subject to the law on government procurement (RPW 2014/2, 442). In addition, the Competition Commission was also approached in order to issue an expert report for a federal office. This again concerned again the law on government procurement, and in particular the conditions that awarding authorities must meet in order to be able to work together within an ad hoc entity that aims to provide IT services to public bodies (application of the “in state” exception; see RPW 2014/4, 785).

65. In connection with the adoption of the revised WTO Agreement on government procurement (GPA), the Federal Act and the cantonal law on government procurement will have to be amended. A working group made up of federal and cantonal representatives has begun to prepare a draft. The Secretariat is seeking to ensure that competition, legal remedies and the Competition Commission’s right of appeal are taken into account in the new legal provisions.

66. The consultation relating to the planned intercantonal agreement on government procurement was completed on 19 December 2014. The planned revision of the Swiss law on government procurement also has consequences for the Competition Commission’s duty to monitor government procurement at cantonal and communal levels. For this reason, the Competition Commission issued a recommendation to the Federal Council and the intercantonal authority for government procurement. The Competition Commission expressly pointed out that the supervision of the award of public contracts by the cantons and communes may be weakened, and that there is no reason for doing this given the current practices.

67. The IMA requires the Competition Commission to monitor compliance with the rules on government procurement. To this end, the Competition Commission has been given various supervisory instruments. It can appeal against invitations for bids, award decisions, etc. in order to obtain a ruling on whether a government contract has been awarded in an unlawful manner. In addition, the Competition Commission can conduct investigations, issue recommendations, prepare expert reports, take a position in proceedings before the Federal Supreme Court and publish judgments. The Competition Commission’s instruments, and in particular the right of appeal, have proven their value and must remain part of the revised law on government procurement, so the Competition Commission can continue to use them.

68. In relation to the award of licences, one Swiss town requested the assistance of the CC IMA in order to draft regulations on the allocating space in public places for carrying on a business in conformity with the IMA, in particular its Article 2 paragraph 7. Among the activities covered by these regulations are weekly markets in particular.

69. By virtue of Article 10 IMA, the Competition Commission can be consulted on the application of the IMA in ongoing proceedings. Paragraph 2 of this provision grants the same power to the Federal Supreme Court. During the year under review, the Federal Supreme Court invited the Competition Commission to provide its opinion on two cases related to government contracts (Judgment 2C\_62/2014 of 7 October 2014; Judgment 2C\_315/2013 of 18 September 2014, in: RPW 2014/4, 775).

### **3.6 *Investigations***

70. In 2014, a major series of unannounced inspections was carried out on the opening of the investigation into automobile leasing. Eight companies were the subject of unannounced inspections.

71. Interviews with parties and witnesses are becoming increasingly important and were carried out in various investigations.

72. In technical respects, it should be mentioned that the laboratory used to analyse the electronic data seized has been upgraded both with regard to hardware (a new server) and software (change to NUIX). Thanks to the investment, our specialist can now work more efficiently and in parallel at several work stations.

### **3.7 *International***

73. **EU:** On 1 December 2014, the Agreement between the Swiss Confederation and the European Union concerning Cooperation on the Application of their Competition Laws came into force. The Agreement will intensify cooperation between the competition authorities in Switzerland and the EU. With the increasing integration of the global economy, cross-border anti-competitive practices occur ever more frequently. The Swiss and EU competition authorities are increasingly required to investigate the same or related allegations. It is therefore appropriate that the two authorities should cooperate and exchange information in cases with cross-border effects.

74. In view of this, on 17 May 2013, Johann N. Schneider-Ammann, the head of the EAER, and Joaquín Almunia, vice-president of the EU Commission and its Competition Commissioner, signed an agreement on the cooperation between their competition authorities. The agreement allows the Competition Commission and the European Commission Directorate General Competition to notify each other of enforcement measures, to coordinate these and to exchange information. At the same time, it contains clear rules on compliance with the existing procedural guarantees for the undertakings concerned. The agreement is procedural in nature and does not entail any harmonisation of substantive law, which is primarily why the issue of adopting EU law did not arise in this case. As Switzerland and the EU are closely integrated, this agreement will contribute to bringing better protection of competition both in Switzerland and in the EU. For more details on the Agreement, reference is made to the Annual Report for 2013 (see RPW 2014/1, 16 ff.).

75. **OECD:** Representatives of the Competition Commission and the Secretariat participated in the three annual meetings of the OECD Competition Committee. In cooperation with SECO, various contributions were prepared and presented. In 2014, special attention was given to two strategic themes, “international cooperation” and “evaluating the activities and decisions of competition authorities”. The new OECD recommendation on international cooperation in competition proceedings and investigations, which replaces the recommendation on international cooperation from 1995, was approved by the Council of

Ministers on 16 September 2014. As the ICN/OECD survey on international cooperation in 2013 demonstrated, international cooperation has become more intense since 1995, due to the increasing globalisation of business. The new recommendation has taken account of these developments and has also been modified to take account of developments in electronic resources.

76. **ICN:** The cartel working groups on legal framework (Sub-group 1) and cartel enforcement (Sub-group 2) held several webinars, i.e. audio conferences with simultaneous PowerPoint presentations. Topics included techniques for interviews, investigative powers, methods for detecting cartels and the interplay between administrative and prosecution authorities in the prosecution of cartel offences. Sub-group 2 also sent out a questionnaire in order to draft a new chapter in the cartel enforcement manual on relations between competition authorities and contract awarding entities. Discussion points at this year's Cartel Workshop were the prevention of bidding cartels, cooperation with anti-corruption authorities and innovative methods for detecting cartels. The working group on agency effectiveness focused on handling confidential information (exchanges between authorities, disclosure to third parties and procedural, parties etc.). The working group on advocacy published a document with recommended approaches on evaluating the effects of legislation and policy on competition (Recommended Practices on Competition Assessment). The Competition Commission was represented at the ICN annual conference in Morocco.

77. **UNCTAD:** Representatives of the Competition Commission and the Secretariat attended the 14th Conference of the Intergovernmental Group of Experts on Competition Law and Policy. The topics discussed at the conference included informal cooperation between competition authorities and communication strategies as a means of effectively enforcing competition law (Agency Effectiveness).

### 3.8 *No revision of the Cartel Act*

78. Under Article 59a of the Cartel Act as revised in 2003, the Federal Council arranges for the evaluation of the effectiveness of measures and for the application of the Act. In view of this, the existing legislation was evaluated in 2008/2009. The evaluation revealed that the Cartel Act and the new instruments (direct sanctions, the bonus system, unannounced inspections and the objection procedure) had generally proven their value. At the same time, however, the evaluation also indicated a need for the revision of certain aspects. The institutional structure of the competition authorities above all, together with a range of substantive legal provisions were deemed to be in need of revision.

79. The Federal Council submitted a dispatch to parliament in February 2012 on the revision of the Cartel Act. In addition to the need for revision noted by the evaluation panel, the Federal Council raised further concerns in the dispatch: firstly it responded to the Schweiger Motion, which demanded a review of the sanctions system (compliance defence and criminal penalties for natural persons); secondly, in connection with the gain in value of the Swiss franc, it considered measures to ensure that foreign exchange benefits are passed on to end customers. In relation to institutional reform, the Federal Council proposed guaranteeing the reduced size, professionalisation and independence of the decision-making authorities by having all cases – at the request of the investigating competition authority – decided by an independent competition court of first instance that is integrated into the Federal Administrative Court. In relation to the substantive law, the Federal Council proposed firstly to improve Article 5 Cartel Act by introducing a law prohibiting hard agreements (horizontal price, quantity and territorial agreements, as well as vertical price fixing agreements and the foreclosure of territories), but with a defence of justification. Secondly, in relation to civil competition law proceedings, it recommended that end customers should have the right to take legal action and that time bar limits should be extended. Thirdly, it called for merger control procedures to be made stricter and simpler (changeover to the SIEC test and more minor changes in relation to EU reports and time limits). Fourthly, it proposed, as a response to the acceptance of the Schweiger Motion, that appropriate compliance programmes be taken into account in assessing sanctions. Finally, it submitted proposals for an improved objection procedure and suggested various minor procedural improvements.

80. In the parliamentary debate, the Council of States approved the Federal Council draft for the revision of the Cartel Act at its first reading in March 2013, subject to various amendments. However, the National Council at its first reading in March 2014 decided not to consider the revision. After the Council of States adhered to its decision in June 2014, but the National Council again decided not to consider the revision in its second reading in September 2014, the final outcome is that the Cartel Act will not be revised.

81. The competition authorities take the view that rejecting the revised Cartel Act without even considering it is a missed opportunity to meet the need for reform highlighted in the evaluation. It also means that several improvements proposed by the Council of States, which in contrast to institutional reform and the substantive provisions (Articles 5, 7a and relative market power) were uncontroversial, are no longer on the table. They comprise the improvements to the merger control procedure, to civil competition law, to the opposition proceedings and to procedures in general. On the other hand, the outcome at the parliamentary stage does nothing to change the finding of the evaluation that the Cartel Act, as revised in the year 2003, basically works well.

#### **4. Organisation and statistics**

##### ***4.1 Competition Commission and Secretariat***

82. In 2014, the **Competition Commission** held 11 full-day plenary sessions. The number of decisions in investigations, merger proceedings under the Cartel Act and in application of the IMA are shown in the statistics in Section 4.2. In the past year, there was no change in the composition of the Commission

83. At the end of 2014, the Secretariat employed 75 (previous year 85) staff members (full-time and part-time), 45 per cent of whom were women (previous year 43). This corresponds to a total of 65.3 (previous year 75.8) full-time positions. The staff was made up as follows: 55 specialist officers (including the management board; this corresponds to 48.8 full-time positions; previous year 52.4); 6 (previous year 13) specialist trainees, which corresponds to 6 (previous year 13) full-time positions; and 14 members of staff in Resources and Logistics Division, which corresponds to 10.5 (previous year 10.4) full-time positions.

84. The Secretariat will relocate in June 2015 within Bern from Monbijoustrasse 43 to Hallwylstras 4.

4.2 *Statistics*

Investigations	2013	2014
Conducted during the year	24	21
Carried forward from previous year	17	19
Investigations opened	7	2
Final decisions	7	6
Amicable settlements	1	4
Administrative rulings	2	0
Sanctions under Art. 49a para. 1 Cartel Act	3	2
Procedural rulings	4	7
Other rulings (publication, costs, inspections, etc.)	-	10
Precautionary measures	0	1
Sanctions proceedings under Art. 50 ff. Cartel Act	0	0
Preliminary investigations		
Conducted during the year	27	20
Carried forward from previous year	18	16
Opened	9	4
Concluded	11	11
Investigations opened	3	1
Modification of conduct	1	8
No consequences	7	2
Other activities		
Notifications under Art. 49a para. 3 let. a Cartel Act	7	2
Advice	20	27
Market monitoring	76	61
Other enquiries	547	594
Mergers		
Notifications	32	30
No objection after preliminary examination	26	35
Investigations	0	1
Decisions of the Competition Commission	0	0
After preliminary examination	0	0
After investigation	0	0
Early implementation	0	0
Appeal proceedings		
Total number of appeals before the Federal Administrative Court and Federal Supreme Court	14	25
Judgments of the Federal Administrative Court	4	7
Success for the competition authority	3	3
Partial success	0	1
Judgments of the Federal Supreme Court	1	0
Success for the competition authority	1	0
Partial success	0	0

Pending at the end of year (before Federal Administrative Court and Federal Supreme Court)	13	21
Expert reports, recommendations and opinions, etc.		
Expert reports (Art. 15 Cartel Act)	1	1
Recommendations (Art. 45 Cartel Act)	0	0
Expert opinions (Art. 47 Cartel Act, 5 para. 4 PMA or 11a TCA)	1	2
Follow-up checks	1	6
Notices (Art. 6 Cartel Act)	0	0
Opinions (Art. 46 para. 1 Cartel Act)	217	254
Consultation proceedings (Art. 46 para. 2 Cartel Act)	5	5
IMA		
Recommendations / investigations (Art. 8 IMA)	1	3
Expert reports (Art. 10 I IMA)	2	1
Explanatory reports (Secretariat)	36	36
Appeals (Art. 9 para. 2 <sup>bis</sup> IMA)	6	5

85. A glance at the statistics and comparison with the figures of 2013 reveals the following:

- The number of investigations carried out has declined slightly and in the 2014 two new investigations were opened. The number of concluded investigations has however remained stable. The Secretariat focused on concluding or making progress with ongoing investigations. In addition, a large number of preliminary investigations were successfully concluded with a change in practice, without an investigation being required.
- In a new move, “other rulings” have now been included in the statistics. These statistics relate to published decisions, the allocation of costs outside investigations, or requests to inspect investigation files. The work involved behind these 10 rulings is considerable.
- There has been an increase in the advisory services provided, and in other enquiries dealt with. The number of market monitoring procedures has fallen. The overall amount of work in these areas has remained stable.
- The number notifications of planned mergers remains practically unchanged when compared with the previous year. The difference under the heading of “No objection after preliminary examination” is because a number of notifications were received in December 2013, but they were not declared unobjectionable until the start of 2014.
- The number of appeals before the Federal Administrative and Federal Supreme Court have increased considerably, because in addition to appeals against the Competition Commission’s final decisions, an increasing number of interim orders or publication rulings were contested. The number of appeals still pending at the end of 2014 is still high.
- The opinions of the Secretariat in office consultation procedures have also increased in number. This represents a significant portion of the advocacy activities carried out by the competition authorities as far as the deployment of resources is concerned (see below 5.).
- In relation to the Internal Market Act, the level of activity of the competition authorities was comparable with previous years.