

SWITZERLAND

(1 January 2001 - 31 December 2001)

Changes to competition law and policy, proposed or adopted

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. The consultation phase regarding the draft revision was completed at the end of December 2000. On 4 April 2001, the Federal Council stipulated the follow-up. The “LCart Revision” task force reworked the text that had been submitted for review and drafted a message about the LCart revision, which the Federal Council adopted on 7 November 2001. The message was then passed along to Parliament.

Other relevant measures, including new guidelines

3. On 17 December 2001, the Competition Commission (Comco) mandated the Secretariat to prepare a communication concerning the assessment of vertical agreements, pursuant to Art. 6, LCart.

Enforcement of competition law and policy

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

Summary of the activity of the competition authorities

4. During the period under review, the Comco Secretariat completed 13 preliminary investigations:
 - 6 involved unlawful agreements (Art. 5, LCart);
 - 6 involved abuses of dominant positions (Art. 7, LCart);
 - 1 involved both unlawful agreements and abuses of dominant positions (Arts. 5 and 7, LCart) simultaneously.
5. Of these 13 preliminary investigations:
 - 11 cases were closed with no action taken;
 - In 8 of these 11 cases, the firms in question agreed out of court on measures to discontinue or prevent restraints of competition.

SWITZERLAND

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

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

7. At 31 December 2001, 17 preliminary investigations and 6 ordinary investigations were in progress.

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 31 December 2001
- 5 = investigation: case closed
- 6 = investigation: in progress at 31 December 2001

Name of case	Art. 5, LCart (agreements)	Art. 7, LCart (dom. pos.)	Arts. 5 and 7, LCart	Outcome (see legend)	Reference in DPC
JUP agreement	x			1	
Lifts			X	1	DPC 2001/3, p. 492
Bio labelling		x		1	
Reparatur Elektrowerkzeuge	x			2	
Holzprodukte	x			2	DPC 2001/4, p. 638
Interprofession du Gruyère	x			2	DPC 2002/1, p. 62
ASTAG	x			2	
Swisscom xDSL services		x		2	DPC 2001/1, p. 73
Post/Swissmail	x			2	DPC 2001/2, p. 239
Swisscom/Publifon		x		2	DPC 2001/2, p. 232
Feldschlösschen/Ulmer&Knecht		x		2	
Debitkarten (Nichtdiskriminierungsklausel)		x		3	
Tele 2/Swisscom		x		3	
TicketCorner AG		x		4	
BSE (Labors)	x			4	
BSE (Schlachthöfe)	x			4	
BSE (Grossverteiler)			X	4	
Hog slaughtering market			X	4	
Heating oil	x			4	
Interprofession de l'Emmental	x			4	
Interprofession Apenzell SärI	x			4	
Sale of health products	x			4	
Tractors			X	4	
Piano tuners	x			4	
Schweizerischer Baumeisterverband (SBV) und kantonale/regionale Baumeisterverband	x			4	
RME fees	x			4	
Axpo partnerships	x			4	
Radio 24/Radio Zürisee	x			4	
VSW Anzeigevertreter		x		4	
Johnson&Johnson		x		4	
Kaladent AG		x		5	DPC 2001/1, p. 88
National Library bidding cartel	x			5	DPC 2002/1, p. 130
SUMRA/watch distribution	x			5	DPC 2001/3, p. 510
CGE	x			5	DPC 2001/1, p. 110
Halbprivatversicherungsvertrag im Kanton Aargau	x			5	DPC 2001/4, p. 645
Private doctor fees in the canton of Zurich	x			5	
Teleclub/Cablecom		x		5	DPC 2001/3, p.503
JC Decaux/Affichage	x			5	DPC 2001/2, p. 306
SBB Lokoop		x		5	DPC 2002/1, p. 72
Mobile telephony			X	5	DPC 2002/1, p. 97
Migros/Watt – EEF		x		5	DPC 2001/2, p. 255
Migros/Watt – SIE		x		5	DPC 2001/4, p. 688
Petrol prices in Switzerland	x			5	DPC 2002/1, p. 77
Citroën	x			6	
Coopforte		x		6	
Vertrieb von Tierarzneimittel	x			6	
Driving schools in the canton of Grisons	x			6	
Kreditkarten (Nichtdiskriminierungsklausel)		x		6	
Private doctor fees in the canton of Geneva	x			6	
Migros/Watt – EBL		x		6	
Feldschlösschen/Coca Cola				6	
Tele2/Swisscom		x		6	
ETA Nova – EKT		x			
Organisation intercantonale de certification (OIC)	x			Art. 45 LCart	DPC 2001/3, p. 500

Summary of important cases

8. **Hospital fee contracts:** In a decision of 1 October 2001, Comco struck down the supplementary insurance fee contract that had been established between the health insurance funds, doctors and private clinics in the canton of Argovia. In this canton, a contract concerning patient billing in the semi-private divisions of private hospitals had been drawn up between a number of health insurance funds, private clinics and the Argovian Doctors' Association (AAV). The contract had applied to policyholders who had taken out supplemental hospitalisation insurance for semi-private divisions and were treated at a semi-private division of a private hospital. The contract in question, which set the prices of services, eliminated price competition among service providers and health insurers, and indirectly it had limitative effects on policyholder premiums.

9. **Private doctor fees in the canton of Geneva:** On 24 October 2001, the Comco Secretariat, in agreement with the presiding justice of Chamber D, launched an investigation of doctors belonging to the Doctors' Association of the Canton of Geneva (AMG). In 1999, specialists belonging to the Association had published a recommendation concerning the prices they should charge patients covered by supplemental health insurance and those seeking medical treatment in private or semi-private hospitals. The preliminary investigation had shown that doctors belonging to the AMG followed the recommendation, but that a number of non-member doctors did so as well. The investigation will ascertain whether those price agreements lead to unlawful restraint of competition under Art. 5, LCart.

10. **Private doctor fees in the canton of Zurich:** In the canton of Zurich, doctors belonging to the cantonal professional association had been charging private patients for their services according to a price list drawn up by the association. Because practically all fees of doctors practising in the canton had been set in accordance with the price list, competition between physicians appeared to be eliminated. Just prior to the end of the investigation, members of the association decided to do away with their price list, thus ending a practice that was probably in violation of LCart.

11. **Investigation of driving school fees in the canton of Grisons:** On 29 March 2001, the Competition Commission Secretariat began a preliminary investigation of the prices charged by driving school instructors in the canton of Grisons. The procedure uncovered various evidence of a price agreement between members of the local trade association. While formal pricing recommendations were no longer being made, over 60% of the instructors charged the same fee for a behind-the-wheel driving lesson. For mandatory traffic-awareness lessons, the proportion was over 70%. Based on these observations, the Secretariat opened an investigation on 15 November 2001. The aim of the procedure was to ascertain whether an illegal price-fixing agreement was in effect in the form of a concerted practice among instructors belonging to the local association. An unlawful agreement among driving school instructors in the canton of Fribourg having been banned in July 2000, this is the second time that the Secretariat has analysed the competitive situation in the driving school market.

12. **Investigation of the distribution of veterinary products:** In 2001, the Competition Commission Secretariat continued the investigation opened in 2000 that dealt with suspicions of unlawful agreements between producer/distributors of veterinary drugs and the veterinarians themselves. Indeed, such products were being sold almost exclusively by veterinarians, and pharmacists were systematically boycotted by the producer/distributors. Insofar as the latter's main argument was that pharmacists were not trained to sell such drugs, the Secretariat commissioned an expert study by two university professors to clarify the issue.

13. **Credit cards – investigation of the non-discrimination clause (“NDR”):** In 2001, the Competition Commission Secretariat continued the investigation it had begun in 2000 of the non-discrimination clause in contracts between credit card organisations and merchants. The clause prohibits

merchants from charging different prices—e.g., granting rebates or discounts—depending on whether customers pay with a credit card or some other means of payment. The investigation is still in progress and will take account, *inter alia*, of recent changes in the market.

14. **JC Decaux/Affichage:** In a decision of 7 May 2001, Comco authorised collaboration between JC Decaux and Affichage. In this investigation, Comco found for the first time that the acquisition of a minority shareholding with clear intentions of co-operation constituted a competition-related agreement. In the autumn of 1999, the JC Decaux advertising group had acquired a 30% shareholding in Affichage, with a view towards collaboration. An investigation was launched because Affichage was Switzerland's largest billboard firm and JC Decaux was one of its potential competitors. The investigation showed that other large companies were active in Switzerland's outdoor advertising market, and that other advertising media would subject billboard advertisers to sufficient competitive pressure. In addition, the investigation showed that large cities were partially restraining competition in respect of outdoor advertising space by waiving bidding requirements or concluding consortium contracts that brought all potential advertisers together in a single concept.

15. **Watt/Migros - EEF:** In a decision of 5 March 2001, Comco found that Entreprises Électriques Fribourgeoises was abusing its regional monopoly by refusing to allow current from the Watt group to be transmitted over its network. A contract had been signed between Watt and Migros whereby Watt would supply electricity to 26 Migros businesses. Apart from using the EEF network, there was no way for Watt to supply the Migros companies, which were located within EEF's distribution area. EEF had refused to allow Watt's current to be transmitted via its network. Because there were no legal grounds why LCart should not be applied in this case, nor any objective reasons justifying EEF's conduct, that conduct was found to constitute an unlawful refusal to do business. Comco's decision was based exclusively on LCart, the Electricity Market Act having not yet entered into force. This decision is under appeal to the Appeals Commission for Competition Matters.

16. **Watt/Migros - SIE:** An investigation similar to that of EEF was conducted of the Service Intercommunal de l'Électricité of Renens (in the canton of Vaud) because of SIE's refusal to allow Watt's current to be transmitted over its network, which was Watt's only option if it were to supply power to three Migros businesses located within SIE's distribution area. Migros cancelled its contract to have Watt supply the businesses and signed a new supply contract with partners of SIE, on terms similar to the conditions offered by Watt. As a result, transmission was no longer an issue. Accordingly, the investigation was closed on 3 September 2001.

17. **Mobile telephone rates:** In May 2000, Comco had launched an investigation to determine whether the conduct of the firms Swisscom, Sunrise and Orange was in compliance with the law on mobile telephony cartels. Their pricing structure and products, along with the level of their prices, had raised suspicions that the three companies had concluded an unlawful agreement. Based on a review of contractual relationships between the firms and developments such as new subscriptions and additional services, it emerged that the operators had not concluded a pricing agreement. Moreover, the investigation showed that Swisscom did not have a dominant position in the market, since competition from Orange and Sunrise made it impossible for Swisscom to operate in an essentially independent manner. Consequently, the investigation was closed on 3 December 2001.

18. **CFF - Lokoop:** Comco had started an investigation of CFF in connection with marshalling services provided to Lokoop SA, a subsidiary of Thurgovian Railways (Mittelthurgaubahn) and South-East Railways (Südostbahn). CFF had refused to offer those services to particular railway stations on a selective basis, whereas Lokoop wanted them only for stations in the St. Gallen region and the Rhine Valley. After its investigation, the Secretariat proposed that Comco find this conduct to be unlawful. As a result, CFF altered its conduct and reached an agreement with Lokoop SA whereby customised marshalling services

SWITZERLAND

could be proposed for each railway station individually. Since the purportedly unlawful conduct had ceased, the investigation could be closed on 3 December 2001.

19. **SUMRA Association / Watch distribution:** By a decision of 3 September 2001, Comco concluded the investigation of retailers and suppliers belonging to the SUMRA Association with an amicable settlement. The investigation had shown that the application by SUMRA's signatory retailers of identical gross margins eliminated effective competition. The cartel was banned, and in the amicable settlement the retailers and suppliers pledged to do away with identical gross margins on sales to end-consumers.

20. **National Library bidding cartel:** In a decision of 17 December 2001, Comco found that the Bernese construction firms of Betosan SA, Isotech SA, Renesco SA and Weiss et Appetito SA had colluded on their bids in response to the public call for tenders for work to renovate the façade of the National Library. Comco enjoined them from colluding during a bidding procedure. The Cartels Act is currently being revised because it does not allow for the direct imposition of fines on the four companies but can only sanction them in the event of a repeat offence.

21. **Petrol prices in Switzerland:** An investigation concerning benzene was launched against Shell, BP, Esso, Tamoil, Migrol, Coop Mineraloel AG, Agrola, AVIA, Agip and TotalFinaElf to determine whether the companies had concluded any pricing agreements. Since no such agreement could be substantiated, the investigation was closed on 3 December 2001.

Summary of the activity of the Price Monitoring Office

22. The Price Monitoring Office is responsible for preventing parties to a cartel, or firms wielding great market power, from imposing unfair prices or excessive increases. Between 1 January and 31 December 2001, the Office focused its activities primarily on network infrastructure (telecommunications, the electricity market, telenetworks) and the realm of health care (the drug market, hospital fees, dentists' fees)—two sectors frequently sheltered from competition and in many cases regulated.

23. Citing insufficient cost coverage, the historical operator Swisscom applied to the Federal Council for a substantial adjustment of the price of analogue telephone hook-ups. The Price Monitoring Office's analysis showed that the grounds for the increase and the information provided were clearly insufficient, and that no increase was warranted. Following that recommendation, the Federal Council decided to maintain the subscription price unchanged (at SF 23.45, excluding VAT). The increase would have put an additional burden of some SF 300 million on consumers and the economy.

24. On 1 July 2001, as part of an amicable settlement, the SWITCH Foundation, which registers and administers Internet addresses in the ".ch" domain, cut registration fees from SF 80 to 40 and annual fees from SF 48 to 35. The Price Monitoring Office's analysis had concluded that the previous prices were excessive.

25. In a formal decision, the Price Monitoring Office directed a regional telenetwork operator to lower the network's subscription fee by approximately 28%. In addition, since no amicable settlement could be reached, a decision procedure was initiated against Cablecom, Switzerland's largest telenetwork operator, in respect of its intention to set a uniform fee of SF 22 (excluding VAT).

26. It is the task of the Price Monitoring Office to ensure that liberalisation does not lead to price increases for customers. In preparing its directive, the Office focused its efforts on the issue of routing

fees. It developed a method aimed at preventing unjustified increases while at the same time giving businesses incentives to invest, thus helping to make the delivery of services more secure.

27. The Office examined the new model for compensating pharmacists, which was geared towards services rendered. Since the new system eliminated the incentive for pharmacists to sell the most expensive drugs, the Office deemed it a positive development and recommended that the Federal Council approve the system. The analysis also showed that the new system would be cost-neutral. The Office also took a position on decrees implementing the Pharmaceuticals Act, including provisions to facilitate parallel imports of formulations whose patents had expired. It has asked for as free a solution as possible in order to prevent health policy arguments from leading to a partitioning of the market.

28. In assessing hospital fees, the Price Monitoring Office expanded its method of analysis. As required by the Health Insurance Act (LAMal), the review of costs submitted by hospitals is now being supplemented by a benchmarking process based on case-by-case cost analysis.

29. The Swiss Odonto-Stomatology Association (SSO) having refused to publish the values of the points used by its members, a written survey of the Association's 3 100 members had been envisaged. Based on the preparations carried out by the Price Monitoring Office, consumer groups undertook their own surveys by telephone and gathered data from 1 400 dentists. The publication of those results has for the first time established transparency in the point values underlying the prices charged in Switzerland.

Summary of the activity of the Federal Communications Commission

30. The Communications Commission (ComCom) was instituted as an industry regulatory authority when the Telecommunications Act (LTC) was amended. One of its missions is to award concessions for telecommunications services, to the extent that it has not already delegated the authority to do so to the Federal Communications Office (OFCOM, Art. 5, LTC). Pursuant to LTC, ComCom is required periodically to put the universal service concession out to tender and to award it through a criteria-based selection process. The contents of the universal service were modified in late October by the Federal Council in connection with a revision of the Decree on Telecommunications Services (OST) (see DETEC's press release of 31 October 2001). Following this change, ComCom decided to attribute only one nation-wide universal service concession. Because of the dynamic evolution of technology and markets, ComCom limited the term of the concession to five years. ComCom directed the Federal Communications Office (OFCOM) to organise the tenders and assess application files.

31. ComCom's other core mission involves interconnection, the conditions for which it must set on request (Art. 11, LTC).

32. The regulation of interconnection was influenced by a Federal Tribunal decision in the *Commcare v. Swisscom* case (ATF 2A.503/2000 of 3 October 2001). The Tribunal went against ComCom's opinion and ruled in favour of Swisscom, deciding that line rentals were not subject to the regulations governing interconnection. Many commentators considered this ruling by a court of last instance as a step backwards in the area of liberalisation.

33. 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, and the Competition Commission makes dominant-position determinations on ComCom's behalf (Art. 11, par. 3, LTC).

SWITZERLAND

34. In this context, it should be noted that the Competition Commission gave an advisory opinion regarding Swisscom's position in broadband xDSL services in an interconnection case brought before ComCom by the DiAx company against Swisscom (DPC 2001/2, p. 348).

Summary of the activity of the Appeals Commission for Competition Matters

35. **Fribourg Driving School Association:** On 12 March 2001, the Appeals Commission for Competition Matters rendered a decision rejecting the appeal lodged by the Fribourg Driving School Association (AFEC). The Association had challenged a portion of the decision of 8 May 2000 in which Comco had found that its prices eliminated or had a notable effect on competition.

36. **Schweizerischer Buchhändler- und Verlegerverband, Börsenverein des Deutschen Buchhandels e.V.:** On 21 May 2001 the Appeals Commission for Competition Matters rejected the appeal lodged by Schweizerischer Buchhändler- und Verlegerverband, Börsenverein des Deutschen Buchhandels e.V. The Competition Commission had prohibited the use in Switzerland of the resale price maintenance system for German-language books. The system covered roughly 90% of the German-language books sold in Switzerland, and it applied at all levels of the market, from publishers to wholesalers to retailers.

Summary of the activity of the cantonal courts

37. None.

Summary of the activity of the Federal Tribunal

38. **SMA (Swiss Meteorological Institute):** On 5 February 2001, the Federal Tribunal ruled on a Comco appeal against the Appeals Commission for Competition Matters' decision in the SMA case [see DPC 1999/3, pp. 415ff (Comco); 2000/3, pp. 461ff (REKO)]. The Tribunal quashed the Commission's decision on the grounds that SMA, as a federal office, lacked the legal capacity to appeal, and that the Appeals Commission should therefore not have heard the appeal. In addition, it declared Comco's decision null and void, since Comco was not empowered to render decisions under Art. 30, LCart in respect of a federal office that did not have its own legal personality and could not be construed as an enterprise within the meaning of Art. 2, LCart. The FT chose to give a formal interpretation to the notion of "enterprise", whereas Comco had used a functional definition. The avenues of administrative appeal or complaint to the supervisory authority remained open to any party discriminated against by the commercial activity of a federal office, and grounds of competition law could be invoked in such proceedings.

39. **Rhône-Poulenc SA & Merck:** On 24 April 2001, the Federal Tribunal handed down a decision in the Rhône-Poulenc SA & Merck case whereby the appeal lodged by the Federal Department of Economic Affairs was upheld. The aforementioned enterprises had challenged the finding that the merger in which they had taken part had to be reported to the Swiss authorities. The firms had won their case before the Appeals Commission for Competition Matters, but the Commission's decision was subsequently reversed by the Federal Tribunal. According to the Tribunal, the reporting requirement also extended to companies headquartered outside of Switzerland, even if they were not physically present in Switzerland, if the thresholds—in terms of turnover—set by Art. 9, LCart were attained.

40. **Kanton Aargau/Bestattungsinstitut A.:** In this ruling, the Federal Tribunal upheld the provisional measures ordered by the civil judicial authority of the canton of Argovia. The case involved two firms in the funeral business. One of them had been commissioned by the cantonal hospital to administer certain care to decedents that was ordinarily performed by hospitals, along with a number of

other services (including the supply of caskets). The competing firm considered that the arrangements constituted a restraint on competition and an abuse of dominant position, and it petitioned the civil authority to have the practice prohibited. The Competition Commission Secretariat has been asked to prepare a legal brief on the subject (Art. 15, LCart).

Summary of the activity of the Federal Council

41. None.

Description of significant cases, including cases with international implications

42. See Rhône-Poulenc SA & Merck case, paragraph 39 above.

Mergers and acquisitions

Statistics on the number, size and type of mergers notified and/or controlled

43. During the period under review, 35 concentration transactions were reported. Comco conducted two extensive reviews.

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

SWITZERLAND

Legend:

- ⊕ = No objection after preliminary investigation (Art. 32, LCart)
 ⊗ = No objection after review (Art. 33, LCart)
 O = Authorisation subject to obligations and conditions
 ♦ = Sanctions for violating the prior notification requirement
 ∇ = Notification withdrawn by the parties
 (V) = Procedure in progress at 31 December 2001
 M = Merger; AC = Acquisition of a controlling interest; JV = Joint venture

Names of participating firms and transaction type	Result	Publication in DPC
DG Bank / GZ-Bank (M)	⊕	DPC 2001/3, p. 523
Swisscom / AGI IT Services (JV)	⊕	
Bertelsmann/Schück (AC)	⊕	DPC 2001/1, p. 115
Edipresse/Senger Media (AC)	⊕	DPC 2001/1, p. 128
Büchler Grafim/Autorevue (AC)	⊕	DPC 2001/1, p. 136
Kirch Gruppe/EM.TV (JV)	⊕	
Bertelsmann/RTL (AC)	⊕	DPC 2001/3, p. 537
Mittelland Zeitung (JV)	⊕	DPC 2001/3, p. 540
Benteli Verlags AG (AC)	⊕	DPC 2001/3, p. 560
Ringier/Druck Winterthur (AC)	⊕	DPC 2001/3, p. 531
EWZ/Enron (JV)	⊕	DPC 2001/4, p. 707
Ziegler Druck/ZH Oberländer (AC)	⊕	DPC 2001/3, p. 569
TA Media/Belcom (AC)	O	DPC 2001/4, p. 721
Nestlé/Coca-Cola (JV)	⊕	DPC 2001/4, p. 746
NOK-E.ON/Watt (AC)	⊕	DPC 2001/4, p. 712
RTL-Group/Canal+ (JV)	⊕	DPC 2001/4, p. 744
UBS/CSG-Crossair (AC)	⊕	DPC 2001/4, p. 760
EDS/Atraxis (AC)	⊕	
Coop/Ringier-Betty Bossi (JV)	⊕	
AZ Vertriebs AG (JV)	⊕	DPC 2002/1, p. 155
EnBW/Lonza-Werke (AC)	⊕	
Edipresse/Journal de Morges (AC)	(V)	DPC 2002/1, p. 159
Helaba / Bayerische Landesbank (AC)	⊕	DPC 2001/2, p. 335
Coop / Galenica (JV)	⊕	
Amedis / Uhlmann-Eyraud (AC)	⊕	DPC 2001/3, p. 553
Allianz / Dresdner Bank (AC)	⊕	DPC 2001/3, p. 526
National / Coop Leben	(V)	
GE / Honeywell	∇	
Siemens SA / Atecs Mannesmann SA (AC)	⊕	DPC 2001/1, p. 134
Shell nouvelles Energies SA / Siemens Solar Sàrl (JV)	⊕	DPC 2001/2, p. 332
Dipl. Ing. Fust / Elektro plus SA / Electro plus Moncor SA (M)	⊕	DPC 2001/2, p. 342
Compass / Selecta (AC)	⊕	DPC 2001/2, p. 344
Raytheon / Thomson CSF (JV)	⊕	DPC 2001/3, p. 534
Zschokke Holding SA / Göhner Merkur SA (AC)	⊕	DPC 2001/3, p. 565
Knauf La Rhénane SA / Alcopor Holding SA (AC)	⊕	DPC 2002/1, p. 145
Ericsson / Sony (JV)	⊕	DPC 2001/4, p. 717
Compass – Restorama / Rail Gourmet (M)	⊕	DPC 2002/1, p. 148
BP/E.ON	⊕	DPC 2002/1, p. 162

Summary of significant cases

45. **Tamedia-Belcom:** In a decision of 1 October 2001, Comco authorised the purchase of Belcom AG (Radio 24, TeleZüri, Tele24) by Tamedia AG. The authorisation, which was granted following an extensive review, was nonetheless contingent upon Tamedia's divesting its equity interest in Radio Zürisee, on the grounds that the concentration might create a dominant position in the greater Zurich radio advertising market. By selling the holding, Tamedia, through Radio 24, would be in competition with Radio Z and Radio Zürisee—two major competitors in the radio advertising market. Advertisers would thus have as many choices after the acquisition as they had before it.

46. **Mittelland Zeitung:** On 29 June 2001, Comco authorised the “Mittelland Zeitung” concentration transaction, which was intended to establish co-operation among the *Aargauer Zeitung*, the *Solothurner Zeitung*, the *Oltner Tagblatt* and the *Zofinger Tagblatt*. The joint enterprise—Mittelland Zeitung—was to assume substantial editorial and advertising control over the four daily newspapers. In particular, it was in charge of common features, with the four existing papers retaining responsibility for local and regional features. Comco deemed that the four major German-language dailies—*Neue Zürcher Zeitung*, *Tagesanzeiger*, *Basler Zeitung* and *Berner Zeitung*—along with other media as well (albeit to a lesser extent), would ensure that competition was maintained.

47. **GE / Honeywell:** Comco conducted an extensive review in connection with the merger between General Electric (GE) and Honeywell. The case was closed when the parties withdrew their notification after the European Commission denied permission for the merger.

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

LCart-related activities of the competition authorities

48. 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 those prerogatives.

Preliminary opinions

49. On several occasions, the Secretariat took positions on proposed legislation, including the implementing decree for the Pharmaceuticals Act and the model for the compensation of pharmacists.

50. **Implementing decree for the Pharmaceuticals Act:** In its preliminary opinion, the Secretariat emphasised the importance of allowing parallel imports, subject to compliance with intellectual property rights. Moreover, it was the Secretariat's opinion that advertising should be permitted for prescription drugs as well. Lastly, it held that mail-order drug sales ought to be allowed.

51. **Model for the compensation of pharmacists:** The Secretariat opposed introduction of the model. First, it strengthened the system of state prices in the realm of basic insurance. Second, the model reintroduced a system of margins and discounts similar to the one that Comco had prohibited in the Sanphar Association case.

SWITZERLAND

Recommendations

52. **Advertising restrictions in the health care professions.** Comco made recommendations to five cantonal governments that they rescind the official restrictions they had imposed on advertising in the medical professions. In Comco's opinion, advertising was an important parameter of competition: it enabled new service providers to make themselves known more effectively, and it helped increase patients' knowledge of the medical services available to them from health care professionals.

53. **Life insurance market:** Comco presented the Federal Council with a recommendation that it open the Swiss life insurance market to foreign competition, in conjunction with the second round of bilateral negotiations with the European Union. Under existing regulations, non-Swiss European life insurance companies could not operate in the Swiss market on the same terms as domestic firms (*inter alia*, they were required to maintain a Swiss headquarters for their Swiss business and, above all, they had to post guarantees).

54. **Cantonal legislation governing lawyers' fees:** Comco recommended that cantons that still published mandatory fees for lawyers abolish them.

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

55. During the period under review, Comco issued recommendations (Art. 8, LMI) concerning access to the architects' and engineers' markets in a number of Swiss cantons. In addition, it prepared two expert reports (Art. 10, LMI).

Recommendations (Article 8, LMI)

56. In respect of the domestic market, on 29 January 2001 Comco issued recommendations concerning access to the architects' and engineers' markets in a number of Swiss cantons. The cantons of Fribourg, Geneva, Neuchâtel and Ticino had cantonal legislation limiting the free movement of architects and engineers. Comco recommended that they repeal the rules requiring: 1) registration in a cantonal register in order to exercise the profession; 2) a specified number of years' practice in order to exercise the profession; 3) an establishment or domicile in the canton; 4) payment of an emolument in order to exercise the profession.

Expert reports (Article 10, LMI)

57. Comco also issued two expert reports in connection with application of the bilateral agreement on public procurement between Switzerland and the European Union. Article 3, Chapter 5 of that agreement provides an exemption clause dispensing certain firms from having to apply the agreement if there is effective market competition. To date, Comco has already issued two expert reports in this area—one regarding the telecommunications market and the other regarding rail transport.

Resources of the competition authorities

Resources overall

Annual budget

58. The total annual budget encompasses expenditure on staff and supplies for Comco and its Secretariat. In 2000, this amounted to SF 4 884 000 (or US\$2 806 835 at the March 2000 exchange rate of \$0.5747 per SF). The total annual budget for 2001 was identical to that of the previous year.

Number of employees

59. Comco is a decision-making authority made up of 15 members. Case files are prepared by a permanent Secretariat that, as of end-2001, employed 48 persons: four managers and 44 assistants, including 17 jurists, 17 economists and 10 secretaries.

Human resource allocation

60. Between 1 January 2001 and 31 December 2001, the Secretariat's staff resources were allocated as follows: a) 65% to combat anticompetitive practices; b) 25% to merger review and enforcement; and c) 10% for advocacy efforts in the form of advisory opinions and recommendations to the courts in appellate procedures.

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

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

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