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(1 January 2000 - 31 December 2000)

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

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

1. The Federal Act of 6 October 1995 on cartels and other restraints of competition (LCart) has not been amended since it entered into force on 1 July 1996.

2. However, in the autumn of 1999 the Federal Department of Economic Affairs set up a Commission of Experts mandated to revise LCart, *inter alia* with a view to introducing direct sanctions. The consultation procedure regarding the draft revision was completed at the end of December 2000¹.

2. Other relevant measures, including new guidelines

3. None.

II. Enforcement of competition law and policy

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

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

4. During the period under review, the Secretariat of the Competition Commission (Comco) completed 18 preliminary investigations:

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

5. Of these 18 preliminary investigations:

- nine cases were closed with no action taken, for lack of evidence of unlawful restraint of competition as defined by LCart;

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- in four cases, the firms in question agreed out of court on measures to discontinue or prevent restraints of competition.

6. During the period under review, Comco completed 10 ordinary investigations:

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

7. At 31 December 2000, 18 preliminary investigations and 18 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 2000
- 5 = investigation: case closed
- 6 = investigation: in progress at 31 December 2000

Name of case	Art. 5, LCart (agreements)	Art. 7, LCart (dom. pos.)	Arts. 5 and 7, LCart	Outcome (see legend)	Reference in DPC
Christie's & Sotheby's	x			1	not published
Coopération Kassensturz – saldo	x			1	2000/1, pp. 8ff.
Kinofilmverleih			x	1	2000/4, pp. 571ff.
Valais ski-lift passes	x			1	2000/3, pp. 319ff.
Emoluments of travel agents	x			1	not published
Training of tennis instructors	x			2	not published
Negative list of health insurers	x			2	not published
Bödeli AG/Tele 24		x		2	-
Apothekerzeitung		x		2	not published
Veterinary products distribution	x			3	not published
Supplemental insurance in AG canton	x			3	not published
Private fees of Zurich doctors	x			3	not published
Lokoop/CFF		x		3	2000/1, pp. 1ff.
Migros/Watt – EEF		x		3	2000/2, pp. 153ff.
Migros/Watt – EBL		x		3	2000/4, pp. 561ff.
Migros/Watt – SIE		x		3	-
Bienne-Seeland petrol prices	x			3	not published
CGE	x			3	-
Private fees of Geneva doctors	x			4	-
Motor vehicle liability insurance	x			4	-
ASTAG – Sector rates	x			4	-
Jahresumsatzprämie Pressewerbung	x			4	-
XDSL-Angebot Swisscom		x		4	-
ETA Nova – EKT		x		4	-
Post/Swissmail	x			4	-
Swisscom/Publifon		x		4	-
Payment terminals		x		4	-
SBV competition settlement	x			4	-
OIC (intercantonal certification body)	x			4	-
Lifts			x	4	-

Name of case	Art. 5, LCart (agreements)	Art. 7, LCart (dom. pos.)	Arts. 5 and 7, LCart	Outcome (see legend)	Reference in DPC
Bio Suisse			x	4	-
Power generating equipment repairs	x			4	-
Cigarette prices			x	4	-
Bathroom plumbing (sale of products)	x			4	-
Emmenthal - Interprofessional			x	4	-
Gruyère – Interprofessional			x	4	-
Sanphar – drug distribution	x			5	2000/3, pp. 320ff.
AFEC – Fribourg driving schools	x			5	2000/2, pp. 167ff.
Intensiv – Production of dental instruments		x		5	Forthcoming
BKW FMB Energie AG		x		5	2000/1, pp. 29ff.
Restaurant beverage prices in French-speaking Switz.	x			5	2000/1, pp. 25ff.
Prices of daily newspapers in Ticino	x			5	2000/1, pp. 16ff.
Vitamin cartel	x			5	2000/2, pp. 186ff.
Asphalt surfacing cartel	x			5	2000/4, pp. 588ff.
Retailing	x			5	2000/2, pp. 212ff.
Volkswagen	x			5	2000/2, pp. 196ff.
Teleclub/Cablecom		x		6	-
JC Decaux / Affichage Holding	x			6	-
Lokoop / CFF		x		6	-
Mobile telephone rates	x			6	-
Migros/Watt – EEF		x		6	-
Migros/Watt – EBL		x		6	-
Migros/Watt – SIE		x		6	-
Feldschlösschen / Coca Cola		x		6	-
Kaladent – Distribution of dental products		x		6	-
Credit cards	x			6	-
Private fees of Zurich doctors	x			6	-
Supplemental insurance in AG canton	x			6	-
Distribution of veterinary products	x			6	-
National Library bidding cartel	x			6	-
Petrol prices in Switzerland			x	6	-
SUMRA (distribution of watches)	x			6	-
Citroën (distribution system)	x			6	-
CGE	x			6	-

Summary of important cases

8. **Driving schools**²: On 8 May 2000, Comco prohibited instructors belonging to the driving school association of the canton of Fribourg (AFEC) from agreeing, in the future, on rates for automobile, motorcycle and lorry driving lessons, as well as on rates for instruction in traffic awareness. In Comco's view, price recommendations constitute cartels that are presumed unlawful if they are adopted by the firms for which they are intended. The fact that the recommendations are not mandatory matters little. In this case, the investigation established that the price agreements in question were adopted by the driving school instructors and that this had a notable impact on, if it did not eliminate, effective competition between instructors in the canton of Fribourg. The results of the investigation confirmed evidence of unlawful restraints of competition that the Secretariat had uncovered during a number of preliminary investigations conducted in several Swiss cantons in the spring of 1999. AFEC's appeal was recently rejected by the Appeals Commission, which ruled in favour of Comco on all points³.

9. **Sanphar**⁴: The Sanphar Association had been regulating the size of margins and discounts in the distribution of medicinal drugs in Switzerland, along with the conditions imposed on the Association's wholesalers. On 7 June 2000, Comco decided to prohibit these agreements because they had a significant effect on competition. With regard to prices (margins and discounts), the Sanphar agreement had operated on three levels. First, drug importers and producers agreed to limit the discounts granted to wholesalers to

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roughly 2 percent of the ex-factory price. Second, wholesalers could not give their own customers discounts in excess of the margins of Sanphar wholesalers. Third, pharmacists, druggists and dispensing physicians were required to set their margins in accordance with a specified percentage or amount based on a drug's final selling price. As for the conditions imposed on wholesalers, the Sanphar agreement set a minimum product range that they were required to carry, and a minimum number of customers to whom they were required to sell, before they qualified for preferential terms on their purchases from producers or importers. The conditions laid down in that agreement constituted barriers to the market entry of new wholesalers that could compete with existing firms.

10. **Recommended beverage prices⁵**: In this case, Comco reviewed price recommendations for certain beverages served in restaurants. The recommendations had been issued to their members by five trade associations belonging to the Gastrosuisse federation. After conducting a preliminary investigation which confirmed that there was evidence of an unlawful pricing agreement, the Commission Secretariat arranged an out-of-court settlement in which the parties concerned stated that each restaurant could set its prices freely; they also pledged never again to make similar recommendations. The terms of the settlement were approved by Comco.

11. **Mobile telephone rates⁶**: On 15 May 2000, the Comco Secretariat opened an investigation into competition in the Swiss mobile telephone market. The procedure was triggered by evidence of a joint dominant position and the level of rates available on the market. It can be seen that the structure and level of the prices charged by the three companies currently operating in Switzerland are in fact extremely similar, in respect of both outgoing calls (origination) and incoming calls (termination). The investigation will ascertain whether this situation is attributable to unlawful restraints of competition in the form of abuse of dominant position and/or restrictive agreement.

12. **Investigation of the vitamin market⁷**: In a decision of 17 April 2000, Comco found that the agreements between members of the world vitamin cartel, which had had repercussions in Switzerland from 1990 until 1999, were unlawful. This case triggered a policy debate on a possible strengthening of the system of sanctions under LCart. A draft revision of LCart, including the introduction of direct sanctions, will soon be submitted to Parliament.

13. **"Asphalt road surfacing" investigation⁸**: In a decision of 4 December 2000, Comco ruled that an agreement amongst three Swiss and two German asphalt surfacing companies was illegal. The agreement in question covered pricing, quantities and territorial division of the market. Since 1996, it had effectively eliminated competition in the asphalt surfacing market. Before the cartel emerged, Swiss firms had been in competition with German ones, which offered their services at substantially more advantageous prices. Under the incriminated agreement, the German companies refrained from competing with Swiss firms, which in return pledged to purchase certain quantities of bitumen from them each year. Subsequently, prices of the German products went up sharply, enabling the Swiss firms artificially to maintain a higher level of prices. Other firms, not belonging to the cartel, also took advantage of these inflated price levels.

14. **Investigation into the production of rotating dental instruments**: Comco found on 18 December 2000 that the firm Intensiv SA dominated the Swiss market for the production of rotating dental instruments, and that it abused that position by boycotting mail order distributors of dental supplies. The investigation showed that customer service was neither necessary nor actually provided when such instruments were distributed to dentists. Moreover, dentists stressed in their statements that they did not desire the kind of customer service that Intensiv imposed on its distributors, and that getting the products through the post was more than sufficient. Under the circumstances, Intensiv's stipulation in this area was not justified by legitimate business reasons and therefore constituted an abuse of dominant position as defined in Art. 7, par. 2(a), LCart.

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

15. The Price Monitoring Office is responsible for preventing cartels or firms wielding great market power from imposing unfair prices or excessive increases. Today, the Office deals primarily with prices set by the government or by powerful corporations⁹. In addition to assessments of the many rate changes submitted by the authorities pursuant to Articles 14 and 15 of the federal Price Monitoring Act (LSPr), postal rate increases, doctors' fees, the drug market and preparations for the forthcoming opening of the electricity market were the Price Monitoring Office's main areas of activity between 1 January and 31 December 2000.

16. Changes in **prices set or approved by the authorities** must first be submitted to the Price Monitoring Office for an opinion. About a hundred announced price increases were analysed over the period under review. Most of the submissions by cantons primarily involved health care, and hospital charges in particular, while those of the communes mainly concerned the prices of electricity, gas, water and rubbish collection.

17. The Price Monitoring Office looked into the increase, on 1 January 2001, of postal rates for **letters and parcels**. Rates for standard letters will not be raised, insofar as the Federal Department for the Environment, Transport, Energy and Communications (DETEC) followed the Price Monitoring Office's recommendations and rejected the postal service's application for an increase. The excellent results of letter delivery operations did not justify a rate increase. In contrast, the rise in parcel rates could not be considered abusive, given the deficit incurred by that activity.

18. With some reservations, the Price Monitoring Office agreed in principle to a new and heavily revised version of the "**TarMed**" **list of doctors' and hospital fees**. No date has been set for the list's entry into force, insofar as the parties concerned still have to work out the specifics of a price change that would be neutral from a cost standpoint. The Price Monitoring Office will attach special importance to cost neutrality when it reviews cantonal point values.

19. Based on the new TarMed, the Price Monitoring Office recommended that the cantons no longer accept the current, excessive fees for **cataract and glaucoma surgery**, and that they enter into new negotiations.

20. A **new comparative study** by the Price Monitoring Office showed that drug prices are still too high in relation to international levels. Compared to Germany, where prices are also high, Swiss prices remain even higher, especially in the case of "off-list" drugs, i.e. those that are not eligible for reimbursement by health insurance funds. The Price Monitoring Office is going to take a close look at this sector. In respect of drugs that are eligible for reimbursement, the Office demanded an extension of international comparisons and abolition of the 15-year price protection period.

21. The Price Monitoring Office decided to close the investigation into the **Microsoft** case. The rising exchange rate of the US dollar considerably narrowed the sharp price differences between Switzerland and the United States that had been observed two years earlier in respect of certain software.

22. The electricity market is going to be opened to competition in stages. During this transitional phase, the Price Monitoring Office's primary task will be to ensure that **customers who remain captive do not have to pay the price of partial liberalisation**. The Office will be entitled to make recommendations to the arbitration board concerning transmission rates. Its powers vis-à-vis the authorities that set final prices will be extended to decision-making authority.

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

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

24. 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).

25. In this context, it should be noted that the Competition Commission gave an advisory opinion regarding Swisscom's position in the line rentals market in connection with an interconnection case that had been brought before the Communications Commission by the Commcare company (DPC 2000/1, p. 70). Here, ComCom had already rejected provisional measures in an incidental ruling of 28 June 1999 in respect of both the interconnection of rented lines and the equipment involved (i.e. direct access to user hook-ups, unbundling the local loop). It was in connection with the primary case that the Competition Commission's expert report established that Swisscom enjoyed a dominant position in line rentals in the local loop, but not for the rest of the network. ComCom's decision was made on 2 October 2000¹⁰ and is currently under appeal.

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

26. In a ruling of 9 March 2000, the Appeals Commission issued a reminder that preliminary investigations were informal procedures, and that their final reports did not constitute formal decisions within the meaning of the Administrative Procedure Act (LPA)¹¹.

27. **SMA**¹². The Appeals Commission for Competition Matters granted the appeal lodged by the Swiss Meteorological Institute (SMA) against the Competition Commission's decision of 6 September 1999 (DPC 1999/3, pp. 415ff.). It acknowledged that even though the SMA is run by a federal administration, it must, by virtue of the letter and spirit of the Cartels Act, be subject to the provisions of that Act insofar as it engages in competition. Nevertheless, because of an amendment to the Meteorology Act and the factual circumstances surrounding the decision, as well as the fact that no abuse of dominant position had been proven, the said decision was reversed. The Competition Commission appealed that ruling to the Federal Tribunal, which recently handed down its decision¹³.

28. **Rhône-Poulenc**¹⁴. The Appeals Commission for Competition Matters, in a decision of 4 July 2000, granted the appeal filed by the firms Rhône-Poulenc S.A. and Merck & Co. Inc. (DPC 2000/4, pp. 690ff.) against Comco's ruling of 16 February 1998. Comco had fined each of the two firms SF 60 000 for having infringed the temporary injunction against merging prior to the expiration of the one-month waiting period stipulated by the relevant legislation. In the appellate body's view, Article 9 of LCart refers to Chapter 1, containing general provisions of the law, and in particular review and resolution of the issue of effects in Switzerland. These effects—actual or potential—must be such as to have a significant impact on competition. In the matter at hand, there was nothing to prove that this was the case. Consequently, the appeal had to be granted and the challenged decision quashed on these grounds alone. In the meantime, the case was taken to the Federal Tribunal, where it is still pending.

29. **Telekurs Holding AG**¹⁵. If a decision in the first instance by the competition authorities involves provisional measures, no reimbursement of legal costs shall be due. Such was the finding of the Appeals Commission in its decision of 14 December 2000. The Commission had been called upon to rule on an

appeal filed by Telekurs Holding AG regarding reimbursement of costs incurred in connection with an application for provisional measures against the company. Like Comco, which had concluded that the appeal should be rejected, the Appeals Commission decided that the law's silence on this point was intentional, and the appeal was therefore denied.

30. **Felix/Minolta**¹⁶. The Appeals Commission for Competition Matters denied the appeal that the firm Felix Service SA had lodged against Comco's decision of 31 March 1999. The Commission held in its decision of 14 December 2000 that Comco had based its ruling on objective elements to define the relevant market and to conclude, in the case at hand, that there existed a "system market" encompassing not only the market for cameras but also that of related after-sale service. This conclusion confirmed that Minolta did not have a dominant position in this market.

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

31. The **Commercial Court of the Canton of Argovia**¹⁷ ruled on a request for provisional measures involving the continuation of business ties between a producer (X) and a distributor. The Argovian judges ruled in favour of the distributor of Brand X products, who felt discriminated against under the meaning of Article 7, LCart, insofar as X was dominant in the market and abused its position by boycotting the distributor. The Court did not refer to the Competition Council for an opinion, inasmuch as Article 15, par. 1 LCart does not require it to do so.

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

32. None.

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

33. None.

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

34. None.

2. Mergers and acquisitions

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

35. During the period under review, 54 concentration transactions were reported. Comco conducted one extensive review.

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

Legend:

⊕ = No objection after preliminary investigation (Art. 32, LCart)

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- ⊗ = 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
 (∇) = Procedure in progress at 31 December 2000
 M = Merger; AC = Acquisition of a controlling interest; JV = Joint venture

Names of participating firms and transaction type	Result	Publication in DPC
1st Half 2000		
Banque Nationale de Paris / Paribas (AC)	⊕ (♦)	forthcoming
Kuoni/TUI (JV)	⊕	2000/3, p. 399
Berner Oberland Medien AG (M)	⊗	2000/3, p. 414
Basler Kantonalbank / Coop Bank (AC)	⊕	2000/1, p. 40
“avec.” (SBB, Migros, Kiosk AG) (JV)	⊕	2000/1, p. 36
NZZ AG/Buchdruckerei Buchs AG (AC)	⊕	2000/1, p. 41
Railtour Suisse SA/RailAway AG (JV)	⊕	2000/1, p. 45
GU Sat.1/Ringier AG (JV)	⊕	2000/1, p. 46
Dow Jones Reuters Business Interactive	⊕	2000/1, p. 43
Actebis-CHS (AC)	⊕ (♦)	2000/1, p. 69
European Aeronautics Defence & Space Company (JV)	⊕	2000/1, p. 66
British Petroleum-Amoco/Mobil (JV)	⊕	2000/1, p. 53
TA-Media/X. (AC)	⊕	2000/3, p. 398
Rätia Energie AG (JV)	⊕	2000/2, p. 235
Südostschweiz Pressevertrieb AG (JV)	⊕	2000/2, p. 230
EM.TV & Merchandising AG (JV)	⊕	2000/2, p. 233
Veba/Viag (M)	⊕	2000/2, p. 224
Radio RI (JV)	⊕	2000/2, p. 249
NZZ/Bertelsmann – SSB (JV)	⊕	2000/2, p. 253
COS-Primus/Online (M)	⊕	-
Totalfina-Elf Aquitaine (M)	⊕	2000/2, p. 228
Tobler-Alruma (AC)	⊕	2000/2, p. 255
Alstom-Alstom ABB Power Generation (AC)	⊕	2000/2, p. 257
Bon Appétit-Bell Gastro	⊕	2000/2, p. 256
2nd Half 2000		
Vodafone/Vivendi/Canal + (JV)	⊕	2000/3, p. 411
Airrange AG (JV)	⊕	2000/3, p. 445
SBB/Post – Sensetalbahn (AC)	⊕	
Vivendi / Seagram (JV)	⊕	2000/4, p. 636
Bertelsmann/EMAP (AC)	⊕	2000/4, p. 653
Bluewin/Swisscom (JV)	⊕	
Alcatel/Thomson (JV)	⊕	2000/4, p. 639
Thurgauer Medien AG (M)	⊕	2000/4, p. 662
Banner.ch (JV)	⊕	2000/4, p. 650

Names of participating firms and transaction type	Result	Publication in DPC
SBB /Securitas (JV)	⊕	
Diax/Sunrise (M)	⊕	2000/4, p. 673
BMT/Schaer Thun AG II (AC)	⊕	2000/4, p. 646
Vivendi /Novartis (JV)	⊕	2000/4, p. 657
La Liberté / Journal du Jura (AC)	⊕	2000/4, p. 671
Vivendi/EdF (JV)	⊕	
Bertelsmann/Schück (AC)	(V)	
Edipresse Senger Media (AC)	(V)	
Bâloise/Banque Cantonale de Soleure (AC)	⊕	2000/4, p. 643
Hong Kong – Singapore Banking Co/Crédit Commercial de France (AC)	⊕	2000/3, p. 450
Mizuho (Dai-Ichi Kangyo/Fuji Bank/Industrial Bank of Japan) (AC)	⊕	2000/3, p. 453
Hypovereinsbank/Bank Austria (AC)	⊕	forthcoming
Chase Manhattan/J.P. Morgan (M)	⊕	forthcoming
Usego Hofer Curti AG-Groupe Magro SA (AC)	⊕	2000/3, p. 396
Nordic Capital /Hiag/Nybron (JV)	⊕	2000/3, p. 443
Bosch/Siemens, GU Demag Krauss-Maffei (AC)	⊕	2000/3, p. 448
Airbus (JV)	⊕	2000/4, p. 645
Bombardier-Adtranz (AC)	⊕	forthcoming
Unilever-Bestfood (AC)	⊕	forthcoming
GlaxoWellcome/Smithkline-Beecham (M)	O	forthcoming

b) *Summary of significant cases*

37. **Rätia Energie AG**¹⁸. In this case, acting within the one-month period of prior review, Comco authorised the assets of electric power suppliers to be concentrated within a joint venture (Rätia Energie AG). The Commission separated the affected markets into the areas of generation, transmission, distribution and supply of electric power. As for the consequences, the Commission made distinctions between horizontal, vertical and other effects. It identified the harmful effects that could potentially arise from the integration of transmission grids and production capacities but ruled them out in this case, referring in particular to a bill on the electricity market, which called for third-party access. It should also be noted that the Rätia Energie AG case was the first in which Comco had analysed a concentration transaction in terms of spillover effects and ancillary restrictions.

38. **Berner Oberland Medien AG**. Comco authorised the merger between Berner Zeitung and Berner Oberland Medien SA following an extensive review. The Commission found that the merger would neither create nor reinforce a dominant position likely to impede effective competition in the Bern daily newspaper market, insofar as the paper *Der Bund* and other media, such as national and local newspapers, along with television, radio and Internet, would be vigilant in ensuring that competition was preserved.

39. **Glaxo Wellcome / SmithKline Beecham**. The planned merger between Glaxo Wellcome and SmithKline Beecham would have posed problems in two pharmaceuticals markets if the parties involved had not given “contractual” or legally binding guarantees during the preliminary investigation phase. This constituted a departure from Comco’s past practice. The firms agreed to a licence transfer, consistent with

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competition law, in respect of topical products for viral infections and anti-virus drugs (except for HIV drugs). In the interim, the licence transfer did in fact take place.

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

1. LCart-related activities of the competition authorities

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

a) Preliminary opinions

41. **Amendment to the draft implementing regulation of the Fribourg Public Health Act**¹⁹. The Competition Commission encouraged the Fribourg authorities to allow health care professionals to advertise, arguing that advertising was needed in the realm of health care because it gave patients more information, enhanced innovation and enabled new health care professionals to make themselves known to the public. Furthermore, the drawbacks of advertising were limited not only by the law on unfair competition, by virtue of which misleading or false advertising could be prosecuted, but also by medical secrecy, which precluded health care professionals from engaging in “personalised” advertising.

b) Recommendations

42. **Drug purchases abroad.**²⁰ Comco recommended that the Federal Council allow health insurers to reimburse drugs and other pharmaceuticals purchased abroad at prices lower than the ones available in Switzerland. An outward opening of the market for drugs licensed for use in Switzerland would boost competition and, along with putting pressure on prices, would give the insured better value for money.

43. Comco also issued a recommendation concerning the loyalty discounts offered by the postal service for the **dispatch of newspapers and magazines**²¹. The postal service gives publishers larger discounts on regular newspaper delivery if they use the service for their morning delivery as well. Through these loyalty discounts, the postal service enjoys a competitive advantage over other firms for the delivery of morning papers. The regulation is inappropriate and distorts competition. The recommendation to the Federal Council may be incorporated into the current revision of the Postal Service Act.

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

44. During the period under review, Comco issued a recommendation (Art. 8, LMI) concerning a draft revision of the Intercantonal Agreement on Public Procurement (AIMP)²². It did not prepare any expert reports under Art. 10, LMI. However, on numerous occasions the Secretariat provided information to the cantons and communes, concerning public procurement, the principle of non-discrimination and mutual recognition of occupational certification.

a) *Recommendations (Article 8, LMI)*

45. Pursuant to Article 8, paragraph 2 of the LMI, Comco provided the cantonal authorities with a recommendation in the realm of public procurement. The purpose of the proposed AIMP amendment was to incorporate obligations arising from the bilateral agreement on public procurement into the intercantonal agreement. In addition, Comco advocated uniform thresholds, because differences in cantonal procurement could lead to obstacles to free competition²³.

b) *Other*

46. For its part, the Comco Secretariat responded to a number of questions about public procurement that had been posed by the authorities or by individuals. For example, it gave opinions to several communes on their proposed public procurement legislation, and issued opinions on particular issues such as contract award procedures, legal procedures and issues involving compliance with legislation on working conditions. The Secretariat also held a discussion with the cantonal and intercantonal authorities on threshold values for tender procedures in order to formulate a recommendation on the subject. In addition, it supported the work of the Parliamentary Administrative Auditing Office (PAA) to prepare a report on LMI's effects on the domestic market and on the free movement of services and people. This report, along with that of the National Council's Management Commission (established on the PAA assessment), were published on 30 June 2000²⁴. Lastly, the Secretariat provided information on recognition of occupational certification and gave its opinion of proposed communal regulations governing taxi services.

IV. Resources of the competition authorities

1. Resources overall

Annual budget

47. 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 is identical to that of the previous year.

Number of employees

48. Comco is a decision-making authority made up of 15 members. Case files are prepared by a permanent Secretariat that, as of end-2000, employed 48 persons: four managers and 44 assistants, including 17 jurists, 17 economists and 10 secretaries.

2. Human resource allocation

49. Between 1 January 2000 and 31 December 2000, 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.

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

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

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

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NOTES

1. <http://www.pd.admin.ch/poly/Framesets/F/Frame-F.htm>
2. DPC 2000/2, pp. 167ff.
3. Decision of the Appeals Commission of 12 March 2001 in the AFEC v. Comco case (forthcoming in DPC 2001).
4. DPC 2000/3, pp. 320ff.
5. DPC 2000/1, pp. 25ff.
6. *Feuille Fédérale* of 30 May 2000, p. 2826.
7. DPC 2000/2, pp. 186ff.
8. DPC 2000/4, pp. 588ff.
9. To read about the activities of the Price Monitoring Office, see DPC 2000/5.
10. <http://www.fedcomcom.ch/fre/press/mitteilung/119.html>
11. DPC 2000/1, pp. 100ff.
12. DPC 2000/3, pp. 461ff.
13. The Federal Tribunal recently quashed the Appeals Commission's decision on the grounds that the SMA, as a federal agency, lacked the standing to lodge an appeal, and that for that reason the Appeals Commission should not have stepped in. In addition, the Tribunal invalidated the Competition Commission's decision, since Comco was not empowered to make any ruling within the meaning of Article 30, LCart vis-à-vis a federal agency. Avenues of administrative appeal and complaint to the supervisory authority were still open to any party discriminated against by the actions of a federal agency, and arguments of competition law could be invoked in connection with such procedures. This ruling, which was handed down on 5 February 2001, has not (yet) been published.
14. DPC 2000/4, pp. 690ff.
15. DPC 2000/4, pp. 703ff.
16. DPC 2000/4, pp. 716ff.
17. DPC 2000/3, pp. 478ff.
18. DPC 2000/2, pp. 235ff.
19. DPC 2000/4, pp. 685ff.
20. DPC 2000/4, pp. 678ff.
21. DPC 2000/3, pp. 457ff.

22. DPC 2000/2, pp. 281 ff.
23. DPC 2000/2, pp. 281 ff.
24. These documents are available from the Management Commissions secretariat and the Management Commissions delegation, 3003 Bern [tel. +41 (0)31/ 322 97 13; fax: +41 (0)31/ 322 98 66; see <http://www.pd.admin.ch/poly/Framesets/F/Frame-F.htm>].