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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWITZERLAND

-- 2008 --

This report is submitted by Switzerland to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 21-22 October 2009.

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Executive Summary

1. In 2008, the Swiss Competition Commission (Comco) terminated three investigations. Furthermore, its secretariat finished its inquiries on a fourth investigation. The Competition Commission imposed sanctions on a subsidiary of Galenica AG for its abuse of a dominant position in connection with the publication of the medicinal products compendium. In addition, the Secretariat requested to sanction Swisscom for its pricing policy in the field of the ADSL broadband internet. Three new investigations concerning illicit agreements were opened in 2008. In two cases house searches were carried out (cf. II.1).

2. In 2008, the Federal Supreme Court rendered several important decisions on the Internal Market Act (IMA) in response to appeals by the Competition Commission. These appeals related to various authorisation procedures for practising a profession. Thus, it was possible to establish a precedent with a signalling effect for the whole of Switzerland. Several disputes in antitrust before the appeal courts over procedural issues tied up resources and prolonged proceeding.

3. In the field of merger and acquisitions, circa 40 proposed mergers were notified in 2008. In three cases, an in-depth investigation was carried out. The Comco approved two of these mergers cases – Coop/Carrefour (retail) and fenaco/Steffen-Ris (agricultural trade) – but subject to conditions (cf. II.2.b)

4. In making recommendations to the Federal Council in the fields of telecommunications and energy, the Competition Commission drew special attention to general conditions that distort competition (cf. III). Direct contacts with public procurement agencies raised their awareness of the issue of bid rigging. Also of major importance in 2008 was the work done on the evaluation of the Cartels Act (cf. I.3) and the preparatory work for the annual conference of the International Competition Network 2009 in Zurich.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related

1.1.1 Legislation

Nothing to mention

1.2 Other relevant measures, including new guidelines

Nothing to mention

1.3 Government proposals for new legislation

Evaluation in accordance with Art. 59a ACart

5. According to art. 59a of the revised Cartels Act of 2003 (hereafter ACart), the Federal Council (government) must arrange for an **evaluation** of the effectiveness competition law measures and of the enforcement of the Cartels Act and submit a report on this to Parliament by the spring of 2009 and make proposals for what further action is required. In January 2009, the Federal Council was presented with the resulting Synthesis Report, which concludes with a series of 14 proposals intended for the consideration of Parliament and the executive authorities. While the first proposal points out that the underlying concept of the current Cartel Act should be maintained, proposals two to five present important improvement to the Cartel Act. In view of the Task Force Cartel Act, their implementation would justify a revision of the Cartel Act. These four proposals are as follows:

- Proposal 1: Competition authorities must be fully independent of political influences and business, and its decision making-members must be professionals. COMCO and its Secretariat must merge into a single entity.

- Proposal 2: Switzerland must conclude cooperation agreements with its main trading partners allowing for formal exchange of confidential information between competition authorities. Moreover, it is necessary to amend Swiss formal law in order to enable the competition authorities to cooperate under certain conditions with their counterparts as per such agreements.

- Proposal 3: Switzerland must harmonize its merger control regime with the corresponding EU regulations, including the SIEC-test, efficiency defense, and dynamic consumer welfare standards.

- Proposal 4: Regarding the restrictions on vertical agreements, Switzerland must abandon the legal presumption of illicit conduct. One should however keep direct sanctions available in case of minimum or fixed price setting and restrictions with respect to territorial agreements.

6. Furthermore, the Synthesis Report shows that the civil aspects of antitrust law, the civil and administrative procedure, and the system of sanctions should be improved, or further evaluated.

2. Enforcement of competition laws and policies

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

2.1.1 Significant investigations terminated in 2008

Documed (Swiss medicinal compendium): abuse of dominant position and sanction

7. In a ruling dated 7 July 2008, the Competition Commission held that **Documed** AG, a subsidiary of Galenica AG, had abused its dominant position in that it had discriminated against trading partners (Art. 7 para. 2 let. b ACart). Documed AG is the publisher of the Swiss medicinal products compendium, which contains technical information on all medicines authorised for use in Switzerland. In addition, Documed AG publishes technical and patient information online. Documed AG discriminated against trading partners when publishing technical and patient information in that it allowed certain pharmaceutical companies that published a large number of texts to agree the prices for the publication "by arrangement". Furthermore, Documed AG demanded the same price for texts that remained unchanged from the previous year as it did for texts that were being published for the first time in the current business year and which therefore had to be revised. In terms of an amicable settlement, Documed AG undertook in future to fix the prices for the publication of specialist and patient information in a non-discriminatory way and based on actual costs. As Documed AG had abused its dominant position, it was ordered to pay a sanction of CHF 50'000.--.

Tariff agreements for supplementary insurance in the Canton of Lucerne

8. In a ruling dated 6 October 2008, the Competition Commission concluded its investigation into **tariff agreements for supplementary insurance in the Canton of Lucerne**. In these proceedings, the Competition Commission examined whether the competition law applies to supplementary insurance (Art. 2 and 3 ACart) and to what extent group negotiations are permitted in supplementary insurance. In the final ruling, the Competition Commission held that, when considered as a group, the public and publicly-subsidised hospitals in the Canton of Lucerne have a dominant position and hold a very strong bargaining

position in relation to health insurance companies. The strong position of the hospitals is essentially conditional on the statutory general conditions in the mandatory basic insurance, which means that the health insurance companies are in practice forced in supplementary insurance to have contracts with all the hospitals. This leads to a situation in which an individual insurer is hardly able to exert any pressure on prices in tariff negotiations. Based on these circumstances, the Competition Commission came to the following conclusions: In principle, it would be desirable for both the service providers and the health insurance companies for negotiations to be held individually or in smaller, homogeneous groups (bilateral negotiations). If the health insurance companies are confronted with a strong group of hospitals (as in the Canton of Lucerne), it may be efficient and thus permitted under competition law to allow the development of a "countervailing power" on the side of the health insurance companies. This means that the formation of groups among the health insurance companies is permitted to the extent that it leads to a balance in bargaining positions (group negotiations). The permissibility of group negotiations for the health insurance companies is conditional in particular on ensuring that no adverse consequences are to be expected for policyholders in the downstream insurance market.

Business customers in telephony: no abuse of a dominant position

9. In a ruling dated 15 December 2008, the Competition Commission terminated the investigation into Swisscom relating to telephony services for **major business customers**. After protracted procedural disputes, the Competition Commission reached the conclusion in its substantive assessment that the indications of abusive conduct on the part of Swisscom in this case were not confirmed. In these proceedings, which also related inter alia to termination in mobile phone networks, it was successfully established that major business customers exerted countervailing power against telecommunications service providers for contracts for their telephony services, for example by means of competitive bidding procedures.

End of the secretariat's investigations in Swisscom ADSL (margin squeeze)

10. In the investigation into Swisscom's **ADSL pricing policy,** the Secretariat completed its enquiries. The Secretariat reached the conclusion that Swisscom had abused its dominant position in relation to ADSL services. The Secretariat therefore proposed that the Competition Commission fine Swisscom the sum of around CHF 237 million. The investigation into ADSL pricing policy relates to the following: Swisscom provides a preparatory service for broad-band internet to other telecommunications service providers such as Sunrise, Tele2, VTX or Green. Swisscom demands - in comparison with the end customer prices – high prices for the preparatory service. In specific terms, in the view of the Secretariat, the pricing policy adopted by Swisscom amounts to a price or margin squeeze, as the margins between the preparatory service and end customer prices is too narrow. Swisscom will be allowed to respond to the proposal of the Secretariat before the Competition Commission makes its decision.

New investigations opened in 2008

11. In December 2008, the competition authority opened three new investigations: the first in the **cosmetics and perfumes sector** (ASCOPA association); the second in relation to door fittings and the third investigation involved various companies in the sector for **heating, refrigeration and sanitation installations**. The opening of two of these investigations have begun with searches.

12. In the fourth quarter, the Secretariat also opened a preliminary investigation into **ETA SA Manufacture Horlogère Suisse SA**, a company in the Swatch Group, after the Secretariat received miscellaneous claims. The reports relate to increases in prices and changes in payment terms for the coming year announced by ETA in connection with watch movements. The preliminary investigation is

intended to show whether there are any indications that ETA holds a dominant position in the market for watch movements and is abusing this when amending prices and conditions.

Major courts decisions

13. In 2008, several important judgments were issued by the Federal Supreme Court and the cantonal courts in application of the revised Internal Market Act (IMA). They clear up certain fundamental issues relating to the application and the scope of the IMA, with the result that their significance goes beyond their importance as individual cases. In the following remarks, only one important judgment as an example is presented in brief. However, the decisions also confirm the importance of the power that allows the Competition Commission itself to appeal against cantonal decisions with restrictions on market access. The Competition Commission is willing to make use of this option in the future in order to be able to resolve fundamental issues.

Decision of the Federal Supreme Court of 13 October 2008 in the case of the Canton of Zurich against Ms X / Competition Commission relating to the self-employed practice of the profession of a psychotherapist (2C_15/2008)

14. The judgement of the Federal Supreme Court was based on the following factual circumstances: Ms. X, who was authorised in the Canton of Graubünden to work on a self-employed basis as a psychotherapist, applied to the Public Health Directorate of the Canton of Zurich for licence to practise her profession in Zurich. This was granted to her on the condition that she successfully completed the (theoretical) basic education in accordance with the Zurich legislation (a university course of studies in psychology). The Public Health Directorate claimed that although Ms X had the special training and the experience of practising as a psychotherapist that was required for the licence, she did not have the required basic education in the form of university qualification in psychology. Ms X's basic education, which consisted of a degree in theology and an Austrian postgraduate MSc in psychology, was regarded as insufficient. Ms X and the Competition Commission filed an appeal in the Zurich Administrative Court claiming there had been a violation of the right to free access to the market under the IMA. The Administrative Court upheld both appeals and instructed the Public Health Directorate to grant Ms X her licence. In response, the Canton of Zurich filed an appeal with the Federal Supreme Court. This rejected the appeal, insofar as it considered it at all, and confirmed the decision of the Zurich Administrative Court.

The decision is of fundamental significance for the following reasons:

15. Presumption of the equivalence of different market access regulations and permissibility of restrictions on market access (Art. 2 para. 5 and Art. 3 para. 1 IMA): If the market access regulations of the places of origin and destination are to be regarded as being equivalent, there is basically no place for restrictions on free access to the market in the form of conditions or requirements. The question as to equivalence is answered by making a comparison of the market access regulations on each side, as result from the applicable general-abstract provisions of cantonal and/or communal law as well as the practices based thereon, taking account of the public interests that must be protected. The authority of the place of destination that is envisaging restrictions on market access is therefore required first of all to verify whether the regulations are equivalent. In the present case, the Federal Supreme Court confirmed the view of the Zurich Administrative Court, which was of the opinion that with regard to the public interests that had to be protected (the protection of the health of the patient), despite divergent regulations on the basic education required, it had to be assumed that the market access regulations were equivalent.

16. In the **Antitrust field**, the courts decisions were mainly pertaining to **procedural issues**. For instance, there was an the appeal proceedings in connection with the removal of seals from evidence confiscated during house searches. The Federal Criminal Court and the Federal Administrative Court both

upheld the procedure adopted by the competition authority for house searches and authorised the competition authority to remove the seals from the seized and sealed evidence.

17. In another judgment dated 29 February 2008, the Federal Administrative Court dismissed an appeal filed by the four financial institutions Credit Swiss, Raiffeisen Switzerland Cooperative, UBS AG and the Zurich Cantonal Bank in the "Maestro Interchange Fees" case. The appeal was against the decision of the Competition Commission in 2007 not to conduct an investigation. Furthermore, no declaratory ruling was issued in relation to the permissibility of a Domestic Multilateral Interchange Fee; DMIF) for domestic card payments using the Maestro debit card.

18. The investigation into **mobile telephony termination charges** was continued in order to include evidence dating from after 31 May 2005. The Secretariat sent requests for information to mobile telephony providers active in Switzerland. Orange and Swisscom refused to respond to these requests for information. The two mobile telephony providers justified their position inter alia on the grounds of procedural economy and made reference to pending appeal proceedings relating to the first phase of the investigation. The Federal Administrative Court, in three judgments issued on 6 November 2008, refused to enter into the substance of the appeals filed by Orange and by Swisscom. In interpreting the legal precedent, the Federal Administrative Court held that when contesting a **request for information**, it is not the case that simply any expenditure incurred in responding to a questionnaire has to be regarded as a disadvantage that cannot be made good. It should therefore be possible to continue the investigation. In addition, an appeal filed by Swisscom is pending before the Federal Administrative Court against the ruling of the Competition Commission dated 5 February 2007 relating to mobile telephony termination charges in the period up to 31 May 2005.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws;

Table 1: Mergers and acquisitions 2008

Number of concentrations notified	42
No objection after Phase I	39
In-depth investigations (Phase II)	3
Early implementation	0

2.2.2 Summary of significant cases

Coop/Carrefour (Supermarkets)

19. Having conducted a detailed examination in 2007 of the merger between Migros and Denner, the Competition Commission began a similar examination of **Coop/Carrefour** at the end of 2007 as part of the merger procedures. The takeover of the twelve Carrefour hypermarkets by Coop in particular raises the issue of whether the joint dominant position held by Migros and Coop that was established in the Migros/Denner proceedings will be strengthened. In certain local markets, the takeover of the Carrefour hypermarkets has also led to major increases in market share.

20. On 17 March 2008, the merger between Coop and Carrefour was permitted subject to certain requirements. The Competition Commission reached the conclusion that the takeover, as far as turnover was concerned, led to a strengthening of the joint market dominance of Migros and Coop, but that this would be weakened in the medium to long-term by the expansion of foreign competitors. The repeated

analysis of the expansion plans of the German discounters thus confirmed the prognoses reached in the Migros/Denner procedure. The requirements imposed by the Competition Commission are that Coop may not take over any other food retailer in the next six years and that competitors with less than a 25 % market share in particularly problematic regions must be offered sales floor areas amounting to a total of 20'000m^2 for takeover.

21. In the supply markets, the takeover of Carrefour strengthened the strong position Coop holds in relations with manufacturers and suppliers. In order to take account of these concerns, the Competition Commission ordered – in analogous terms to the Migros/Denner procedure – that Coop must permanently forgo exclusivity agreements with suppliers. This means that a prohibition of exclusivity agreements with suppliers now applies to both Migros and Coop. In addition, Coop was required to find individual solutions for suppliers whose products have been delisted and which are in a position of dependency. The Competition Commission delegated the supervision of compliance with the requirements to an independent audit company.

Notifiable concentrations Migros/Denner

22. According to Requirement 4 of the ruling in Migros/Denner (see also DPC 2009/1), Migros was obliged to report all mergers in the food retail market by 4 September 2010. In addition Migros must – in terms of Art. 9 para. 4 ACart – irrespective of the turnover of the target of the takeover, not only report all takeovers in the food retail market, but also takeovers in markets that are up or downstream of the food retail market or parallel to it. Four takeovers were reported in 2008 in terms of this requirement. The takeovers took place in the food industry (cf. Mifroma/Dörig; Micarna/Natura), in the retail trade in furniture and furnishings (cf. Migros/Gries Deco Holding GmbH) and in the convenience field (cf. Migros/Cevanova). All mergers were assessed to be unobjectionable.

Fenaco/Steffen-Ris (agriculture)

23. An in-depth investigation was made into the takeover of **Steffen-Ris** Holding by **Fenaco** (which includes Landi). The merger led to the establishment of the strongest agricultural trading company, as Fenaco and Steffen-Ris Holding are among the leading companies in the agriculture sector. In the markets for the wholesale of ware and processing potatoes as well as for the whole-sale of seed potatoes, there were significant increases in market share. Furthermore, account had to be taken of the fact that the Swiss agricultural market, at least in the case of ware and processing potatoes, is not completely open. On the other hand, the strong buyer power of the processing firms could countervail the market power resulting from the merger. The Competition Commission ordered that the following condition be imposed: Fenaco (including Landi) must not impose or enforce any obligations to purchase or supply on farmers. This will firstly increase the freedom that the producers have and secondly keep access to producers open to all market participants (commercial and processing firms).

Heineken/Eichhof (beer market)

24. After an in-depth investigation, the Competition Commission approved the takeover of **Eichhof** by **Heineken**. Special attention was given to the extent to which there may be joint dominance of the market by the two large brewing groups Heineken/Eichhof and Carlsberg/Feldschlösschen following the merger. The examination, however, failed to confirm indications that any joint dominant position would be stable and sustainable. In particular, breweries with a strong regional presence have clearly not been restricted in their competitiveness by the merger. Furthermore, large retail companies can significantly limit the influence of the two large brewing groups.

Further mergers cases

BNP Parisbas/Fortis (banks)

25. BNP Paribas, a banking group listed in France, acquired a majority share-holding in Fortis Bank SA/NV, Fortis Bank Luxembourg SA and in Fortis Insurance Belgium SA/NV. These companies belonged to the Fortis banking group, which is a victim of the financial crisis. The market shares held by the subsidiaries and the branches of Fortis Bank SA/NV and of Fortis Bank Luxembourg SA in Switzerland are not particularly high. Thus, this merger neither created nor strengthened a dominant position for BNP Paribas in the relevant markets in Switzerland. In addition, the parties have confirmed that the undertaking given by BNP Paribas to the European Commission is also valid in Switzerland.

Tele2/Sunrise (telecommunications)

26. On 10 November 2008, the Competition Commission gave the green light to the takeover of **Tele2** by **Sunrise**. The preliminary investigation revealed no indications that a dominant position would be established or strengthened.

Porsche/Volkswagen and Volkswagen/Scania (cars)

27. In addition, in the automotive sector two significant merger plans in the shape of **Porsche/Volkswagen** and **Volkswagen/Scania** that have effects on the Swiss market had to be assessed. The Competition Commission investigations revealed in both cases that the horizontal overlapping caused by the plans is limited, and the parties to the mergers in the relevant market sub-segments for automobiles, commercial vehicles, trucks and buses will still face strong competition from rival companies with substantial market shares. In the course of the preliminary examination of the Volkswagen/Scania merger, an examination was made inter alia of whether Volkswagen held de-facto control over the truck and bus manufacturer MAN. This would have significantly changed the market share held by Volkswagen in certain relevant markets. The concerns, however, proved to be unjustified. In the case of Porsche/Volkswagen, Porsche was already a major VW shareholder before the planned merger and was essentially acquiring control of Volkswagen through a share purchase transaction that involved taking over a further 4.92 % of the voting capital.

Intra/CSS and Xundheit/Concordia (health insurances)

28. Preliminary examination showed that the takeover of **Intras by CSS** and of **Xundheit by Concordia** did not pose the problems of creating or strengthening a dominant position in the various markets in which these companies are active. Nevertheless, it appears in certain cantons, primarily in relation to supplementary health insurance, that significant parts of the market were affected after the merger. It should be noted that the merger between Concordia and Xundheit has not in fact been carried out.

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

3.1 Total revision of the Federal Act on Public Procurement

29. The preliminary draft on the total revision of the Federal Act on Public Procurement (PPA), which has been sent to the consultative committee stage, gave rise to several submissions. The Competition Commission supports the aim of the revision of a partial harmonisation with cantonal public procurement law, although from the standpoint of competition policy a total harmonisation would be the preference. The partial harmonisation is also linked to the integration into the new PPA of the specific provisions on

procurement law contained the Internal Market Act, and this is also supported in principle by the Competition Commission. However, suppliers must continue to have the option of asserting, if need be through the courts, their right to free and equal access to the cantonal and communal supply markets.

30. In addition, the Competition Commission welcomes the efforts to safeguard the law on public procurement against any instrumentalisation by criteria unrelated to public procurement, such as social or regional policy criteria, and thus against distortions of competition. Undistorted competition between suppliers is an essential requirement for ensuring that public authorities can invest their (tax) resources cost-effectively. Furthermore, in the view of the Competition Commission, the total revision should be used as an opportunity to create minimum rules for the award of licences – which according to the prevailing understanding does not constitute public procurement – with the aim of making competition between licensees possible and of guaranteeing the transparency of the award procedure. Moreover, in the sub-threshold field, anti-competitive negotiated award procedures should be reduced to a minimum, with the more competition-friendly procedure for inviting bids being encouraged. The Competition Commission and its Secretariat will continue to pay close attention to the revision process and will lobby for the remaining implementing ordinances to be formulated in a competition-friendly manner.

3.2 Information campaign with procurement entities concerning bid-rigging

31. The Secretariat has identified the combating of bid rigging as a long-term priority issue. As far as dealing with this priority issue is concerned, the Secretariat's strategy is to pursue two approaches: on the one hand, the general public and the state procurement agencies should be made more aware of the problem of bid rigging, and the role of the competition authorities as a contact partner should be made more effective. On the other, internal regulations should be put in place to encourage the disclosure of these arrangements. Overall, in the medium term the deterrent effect of the Cartels Act should be increased and the incentives for forming bidding cartels should be reduced. In order to achieve this goal, contacts have been established with procurement agencies and important bodies in the field of public procurement. In a further measure, the Secretariat conducted external training sessions for employees of federal procurement agencies in order to raise their awareness of bid rigging. One result of these efforts is that they have led to the first internal efforts in cooperation with cantonal procurement agencies to identify potentially problematic markets.

3.3 Consultation on the Federal Act on Contracts of Insurance

32. In the field of **insurance,** the Secretariat responded as part of an office consultation procedure to the draft revision of the Federal Act on Contracts of Insurance. The Secretariat welcomed a number of amendments to the current law that will lead to increased clarity and thus more transparency in favour of insured persons. It hopes that this will make the products offered easier to understand and compare, something that must be regarded positively from the standpoint of competition law. There is however still a need for clarification on the issue of the duty to provide information relating to the payment of insurance brokers by insurance companies. Here the Secretariat takes the view that a duty to provide information should af-fect all insurance brokers in the same way. Accordingly, this duty applies not only to the broker acting for the insured person, but also the insurance agents representing the interests of one or more insurance companies. This is the only way that it can be guaranteed that there can be no undesirable market distortions between these two types of brokers and that the customer is informed about the payments.

3.4 Joint recommendation for network access tariffs for Swiss telecom companies

33. In a **joint recommendation** dated 25 August 2008, the Competition Commission, the Price Supervisor and the Federal Communications Commission (ComCom) together urged the Federal Council to introduce an effective instrument for the more expeditious fixing of network access tariffs for Swiss

telecom companies. The Telecommunications Act should be amended so that interconnection and access charges may now be reviewed ex officio by ComCom. Until now, ComCom has only been able to review access charges in response to a complaint from a provider. The joint recommendation made by the Competition Commission, the Price Commission and ComCom was thereafter included in a parliamentary motion (the "Forster Motion"). The Federal Council accepted this motion on 5 December 2008.

3.5 Swissgrid recommendation (electricity market)

34. In the energy sector, the Secretariat monitored the market for **system services** (essential emergency services for network operations). In the course of this monitoring, it emerged that the representation of the electricity boards in the expert commissions and committees of swissgrid (which operates the Swiss high-voltage network) led to a risk of distortions of competition, among other things due to information advantages. The swissgrid expert commissions draw up proposals, in particular the assessment principles for invitations to tender, which are then submitted to the swissgrid board. The larger electricity boards (Atel, BKW, CKW, EOS, ewz and NOK) may therefore use their representatives to exert influence on the valuation of the services, and then submit their bids on the basis of this. In addition, they hold an information advantage over competitors as a result. On 28 October 2008 therefore, the Competition Commission issued a **recommendation** to the Federal Council based on Art. 45 para. 2 ACart. The Competition Commission recommended that the Federal Council approve the articles of association of swissgrid only on condition that the swissgrid committees and expert commissions are made up of independent experts and not of employees of the companies operating the network. In addition, the Competition Commission requested an immediate review of the composition of the board to ensure that it conformed with the law. Subsequently, Swissgrid decided to disband its expert commissions with immediate effect.

35. The continuation of the monitoring of the market for system services will depend inter alia on the revision of the Electricity Supply Ordinance. The competition authority also conducted further market monitoring procedures relating to bidding behaviour and price trends among electricity supply companies and obtained related information. If there is any suspicion of concerted practices among electricity companies, the required proceedings will be initiated.

4. Resources of competition authorities 2008

Table 2: Resources Swiss competition Commission (Secretariat) for year 2008

Professionals Lawyers Economists	43 (39.7 full-time positions) 29 14
Support staff	10 (7.7 full-time positions)
All staff combined	64 (57.9 full-time positions)

36. At the end of 2008, the Secretariat employed 64 staff (full-time and part-time), of whom 45 per cent are women. This corresponds to a total of 57.9 full-time positions. The staff was made up as follows: 43 specialist officers (including the management board: 39.7 full-time positions), 11 specialist trainees (10.5 full-time positions), and 10 employees in resources and logistics service (7.7 full-time positions).

5. Statistics 2008

Investigations	**2007**	**2008**
Carried out during the year	18	17
Carried over from the previous year	15	13
Opened	3	4
Final decisions	7	4
Modification of conduct	3	1
Amicable settlement	1	1
Administrative ruling	3	1
Sanctions under art. 49a para. 1 ACart	2	1
Precautionary measures	2	2
Sanctions proceedings under art. 50 ff. ACart	0	0
Preliminary investigations		
Carried out during the year	28	19
Carried over from previous year	21	11
Opened	7	8
Concluded	18	12
Investigations opened	1	2
Modification of conduct	6	2
...No consequences	11	8
Reports under Art. 49a para. 3 let. a ACart	26	31
Advice	28	23
Market monitoring	62	36
Other enquiries	212	246
Mergers		
Reports	45	42
No objection after preliminary examination	39	39
Investigations	5	3
Decisions of the Competition Commission	3	2
Early implementation	0	0
Appeal proceedings		
Total of appeal proceeding	n.a.	12
Concluded in 2008	n.a.	8
Success for the Competition Authority	n.a.	7
Partial success	n.a.	1
Pending at end of year	n.a.	4
Expert reports, recommendations and opinions, etc.		
Expert reports (Art. 15 ACart)	1	2
Recommendations (Art. 45 ACart)	0	4

Investigations	**2007**	**2008**
Expert opinions (Art. 47 ACart or 11 TCA)	4	3
Follow-up checks	1	1
Notices (Art. 6 ACart)	1	0
Opinions (Art. 46 para.. 1 ACart)	84	71
IMA		
Recommendations / investigations (Art. 8 IMA)	0	0
Expert opinions (Art. 10 I IMA)	0	0