

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Switzerland****-- 2018 --****5-7 June 2019**

This report is submitted by Switzerland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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## 1. Foreword from the President

1. The reality of competition and of the internal market is decisively shaped by the practices of the competition authorities and the courts. The decisions of the Competition Commission are the result of comprehensive deliberations involving complex dossiers, detailed consultations with the parties and intensive discussion within the Commission. In 2018, the Competition Commission concluded four investigations in different markets and conducted an in-depth examination of three mergers of media companies. Most of these decisions have taken full legal effect.

2. Special emphasis in 2018 should be placed on the “Engadin I” decision, which relates to a large number of bid rigging agreements in the Lower Engadin, the detailed examination of the three company mergers, AZ Medien / NZZ, Tamedia / Goldbach and Tamedia / Basler Zeitung, the decision on price-fixing agreements and customer sharing by Husqvarna and Bucher in connection with Aspen engine fuel, the decision on the unlawful export ban on wheeled suitcases imposed by RIMOWA, and the decision in the KTB-Werke case on unlawful practices in the gravel and concrete industry in the Bern area. In relation to the three mergers in the media industry, the Competition Commission’s statutory role must be highlighted: it has to establish whether mergers create or strengthen a dominant position that is capable of eliminating effective competition. The Competition Commission has no direct mandate to ensure diversity in the media: the legislature has specified that the Commission operates within a framework determined by competition law, not by media policy.

3. The “Engadin I” decision, issued in April 2018, has had a serious impact. One of ten investigations into bid rigging in the canton of Graubünden, it involved a large number of arranged procurements in the Lower Engadin. Companies agreed with each other on which firm should win which bid at which price. In some cases, these agreements formed part of a system that operated over many years, in other cases they were entered into for individual construction projects. The value of the public and private procurements involved in the Engadin was well over CHF 100 million. The economic damage caused by bid rigging is severe. This is another reason why the Competition Commission has made a priority of combating bid rigging in the past ten years.

4. Efforts go beyond applying the Cartel Act and the Internal Market Act in individual cases. Also important were the many information and awareness-raising events, including those with and for federal and cantonal procurement offices: where people are aware of and can recognise bid rigging, they can often prevent it altogether. Also worth highlighting is the development of a statistical tool that recognises irregularities in the way that suppliers make offers. This tool allows the competition authorities pursue an active policy in uncovering cartels, thus increasing the deterrent effect of the Cartel Act. The screening tool developed by the Competition Commission Secretariat has not only been used in Switzerland, but also aroused a response and interest at an international level.

5. Functioning competition is an important factor in economic well-being. The diligent application of the Cartel Act and the Internal Market Act is therefore in the interests of a strong and healthy Swiss national economy. In the social and political debate, the current law and its application is sometimes judged to be too strict, and at other times too lax. The relatively high number of political proposals is an indication of this. The protection of effective competition is a central pillar of a sustainable economic policy, and the Competition Commission safeguards this area of responsibility at an

institutional level. The Commission acts in the interests of competition and to this end also participates in the public discourse on matters relevant to competition. Its main task, however, lies in the applying the current law. This annual report also bears testimony to the complexity of the work required to achieve this.

## 2. The Most Important Decisions in 2018

### 2.1. Decisions of the Competition Commission

6. On 29 January 2018, the Competition Commission (ComCo) concluded its investigation into Husqvarna and Bucher, which it had opened on 31 May 2016 in response to a voluntary report from Husqvarna. The investigation showed that from 1998 until the start of 2016 there was an unlawful horizontal agreement between Husqvarna and Bucher relating to price-fixing and customer sharing in connection with the sale of engine fuel of the Aspen brand. In amicable settlements with the competition authorities, both companies undertook to refrain from entering into such agreements in future. Husqvarna was exempted from a sanction because it had notified the competition authorities of the agreement and thus facilitated the opening of the investigation. Bucher's cooperation led to a substantial reduction in the fine to around CHF 610,000. The decision has taken full legal effect.

7. On 9 April 2018, ComCo concluded the investigation into the German company RIMOWA GmbH with an amicable settlement and a fine, both of which are legally binding. The investigation showed that in its dealership contract with its German sales partners for period from 25 January 2012 to 13 November 2013, RIMOWA had unlawfully prohibited the export of its products to Switzerland. The company was therefore fined CHF 134,943. In an amicable settlement with the competition authorities, RIMOWA undertook not to enter into similar agreements in future. The company's cooperative conduct led to a reduced sanction.

8. On 26 March 2018, ComCo issued its "Engadin I" decision, imposing sanctions on several construction companies for numerous bid rigging agreements in the Lower Engadin; the fines amounted to around CHF 7.5 million. ComCo thereby concluded the eighth of ten investigations into bid rigging in the canton of Graubünden (see Section 1). In its decision, ComCo held that construction companies in various cartels reached agreements on what is conservatively estimated at over 400 contract bids for structural and civil engineering projects. The value of the procurements affected by these agreements is well over CHF 100 million. The construction companies agreed over a period of many years which of them should be awarded the contract. In most cases, agreement was also reached on the tendered price at which the designated "winner" should carry out the construction project for the procurement office. The Graubünden construction companies ran some of the cartels systematically over a number of years. These agreements were in some cases reached at preliminary meetings organised by the Graubünden Builders' Federation. The cartels focused on invitations to tender issued by the Canton of Graubünden and by communes and private individuals in the Lower Engadin. The contract values for the agreed construction work range from a few tens of thousands to several million francs. As the Graubünden Builders' Federation organised some of the cartels, ComCo ordered the Federation to pay part of the procedural fees.

9. ComCo was called upon to make an in-depth assessment of three company mergers in the media industry: *AZ Medien/NZZ*, *Tamedia/Goldbach* and *Tamedia/Basler*

*Zeitung*. Following a detailed examination of the *AZ Medien/NZZ* merger, there were indications that the foundation of the joint venture by AZ media and NZZ could lead to or strengthen a dominant position in the markets for readers in the Solothurn and Aargau areas and in the magazine advertising market for building services engineering. There were also indications of the establishment or strengthening of a joint dominant position with the *Basler Zeitung* in the market for readers of daily newspapers in the Basel area, and with the Tamedia Group and the Ringier Group in the market for readers of Sunday newspapers. However, it was not anticipated that establishing the joint venture will allow the companies involved to eliminate effective competition in the markets concerned, as other strong competitors remain and the merger will not lead to any relevant change in the competitive situation in the market for Sunday newspapers. The detailed examination of Tamedia's takeover of Goldbach revealed that the planned merger would not lead to significant changes in market conditions. In addition, it was not anticipated that the portfolio effects caused by the merger would lead to an elimination of effective competition. In the detailed examination of the *Tamedia/Basler Zeitung* merger there were also indications that the takeover of the *Basler Zeitung* could lead to a dominant position together with the NZZ/AZ Group and the Ringier Group being established or strengthened in the market for readers of daily newspapers in the Basel area and in various markets for classified advertisements both in the Basel area and in German-speaking Switzerland. ComCo however concluded that market conditions will hardly change as a result of the change in the owner of the *Basler Zeitung* and the takeover does not lead to an elimination of effective competition. The assessment reached in the detailed examination meant that ComCo gave the go ahead to all three mergers in August and October of 2018. In this connection, it should be stressed that ComCo is not pursuing any form of media policy. It is not permitted to take media policy issues, such as diversity in the media, into account in its assessment of merger plans.

10. In a decision dated 10 December 2018, ComCo concluded the KTB Werke investigation. This originated from the investigation opened on 12 January 2015 into companies in the building materials and landfill industry in the canton of Bern. ComCo issued the parties with its ruling at the start of 2019 and then informed the public in a press release. For several years, the Kästli and Alluvia Groups had fixed prices and price elements in the concrete- and gravel industry and shared business in and around the city of Bern. Between them they restricted competition to a considerable extent and abused their jointly held dominant position in the area in and around the city of Bern in order to prevent competitors from entering the market. The companies have appealed to Federal Administrative Court against the decision.

## 2.2. Court judgments

11. On 3 May 2018, the Federal Administrative Court decided not to consider the appeal filed by Ticketcorner against the prohibition of its merger with Starticket. The court justified its decision essentially on the grounds that Tamedia (as Starticket's parent company) had chosen not to appeal and had announced that it would develop Starticket on its own. As a result, Ticketcorner's appeal was not admissible because the company lacked a (current and practical) legitimate interest in having the judgment quashed or amended. The decision of the Federal Administrative Court has been challenged. In relation to the question of whether in cases involving the prohibition of a merger both parties to the merger must contest the ruling together, the Federal Administrative Court regarded two points of view as relevant: firstly if Ticketcorner were able to artificially prolong the current uncertain effectiveness of the merger agreement against the interests

of Starticket, that would allow a situation in which only one of the parties to the merger could bring an appeal against the prohibition order. Ticketcorner could also unilaterally delay the creation of legal certainty and in particular a legally-enforceable decision with regard to its position in the market. Secondly the Federal Administrative Court argues that Ticketcorner and Tamedia form a community of interests with regard to the merger. As both companies were required to report the merger, then – based on the community of interests which required their solidarity – they should also have filed a joint appeal against the merger.

12. With its judgment of 18 May 2018 in the case of *Altimum SA/Mountaineering equipment*, the Federal Supreme Court partially upheld the appeal filed by the Federal Department of Economic Affairs, Education and Research (EAER) and ComCo against the judgment of the Federal Administrative Court dated 17 December 2015 and confirmed the ComCo ruling of 20 August 2012 to the effect that Altimum SA, by dictating minimum sale prices for mountaineering equipment to its retailers, had entered into unlawful vertical price-fixing agreements. The Federal Supreme Court explained inter alia that retailers are parties to an unlawful agreement if they enter into a sales contract with a manufacturer on condition that they comply with minimum retail prices even if they face not being supplied with goods if they do not. It is sufficient that the agreement aims to achieve a restraint of competition; an evaluation of its effects, in particular the extent to which the agreement is followed, is not required. On this issue, the Federal Supreme Court confirmed the relevance of its GABA/Elmex decision. According to the Federal Supreme Court, one possible justification for fixing minimum prices would be to enable retailers to compete through the quality of the advice they give to customers and thus to counteract the ‘freeloader problem’ (getting advice in a specialist shop – then buying the product from a cheaper supplier). However, this justification had not been argued here. For procedural reasons the Federal Supreme Court did not impose any sanction on Altimum SA.

13. In its decision of 16 December 2011 on the case relating road construction and civil engineering in the canton of Aargau, ComCo took action against bid rigging. Fourteen construction companies operating in the canton of Aargau were fined around CHF 4 million for entering into unlawful bid rigging arrangements between 2006 and 2009 on prices and the allocation of markets. Around 100 public and private construction projects were affected between 2006 and 2009 by the unlawful bids. Four companies contested ComCo’s decision. The appeal was pending before the Federal Administrative Court for around six and a half years. On 25 May 2018, the Federal Administrative Court largely upheld the decision of ComCo against the construction companies from the canton of Aargau. The Federal Administrative Court confirmed the legal assessment of the conduct under investigation as hard horizontal price-fixing agreements and agreements to allocate markets according to business partners in contravention of the Cartel Act. In its judgments, the Federal Administrative Court clarified some important issues. These include the minimum legal requirements on the evidence that must lead and the appraisal of evidence in competition law investigations, and dealing with information from companies that report their own unlawful conduct and cooperate with the competition authorities. Furthermore, the Federal Administrative Court clarified issues relating to alleged infringements of procedural rights by the competition authorities and confirmed that violations of competition law (in some cases with no financial gain) can lead to sanctions as well as the legality of the method used by ComCo for fixing fines in specific cases. Because the court’s assessment of the facts differed to some extent from

that of ComCo, the court reduced the sanctions. One construction company has appealed the decision of the Federal Administrative Court to the Federal Supreme Court.

14. On 22 November 2016, ComCo filed three appeals against the cantonal Commercial Enterprises Act (Legge sulle imprese artigiane, LIA) in the Cantonal Administrative Court in Ticino. The LIA provided for the mandatory, costly and time-consuming registration of skilled trades businesses. More than ten documents with supporting evidence had to be submitted for each registration. In particular, the LIA prevented access to the market in Ticino for businesses from other cantons. The Cantonal Administrative Court upheld ComCo's appeals in its decisions dated 27 February 2018. It regarded the requirements of the LIA as restricting free access to the market and as a breach of the Internal Market Act (IMA). The Federal Supreme Court dismissed the subsequent appeals from certain Ticino trade associations and skilled trades companies in decisions dated 11 October 2018 on the grounds that they had no title to appeal, with the result that the judgments of the Cantonal Administrative Court became legally binding.

15. The Federal Administrative Court handed down further decisions in the case relating to road construction and civil engineering in the canton of Aargau. On the conclusion on 16 December 2011 of the main proceedings relating to bid rigging and the publication of the decision on sanctions, procurement offices from the canton of Aargau filed two **requests to inspect** the unredacted Competition Commission ruling and related files. This procedure was initially adjourned, and following the adjournment ComCo issued its decision in rulings dated 11 December 2017. It approved the request to inspect in some cases and planned to allow the applicants to inspect the documents and be given information to a limited extent. Certain parties appealed against the inspection rulings. On 23 October 2018, the Federal Administrative Court issued three judgments upholding the appeals. The divergent decision by the Federal Administrative Court was due to the fact that it interpreted Art. 19 para. 1 let. a of the Data Protection Act (FADP) more restrictively than ComCo. Under Art. 19 para. 1 let. a FADP, the data requested may only be disclosed if they are indispensable for the applicant to fulfil its statutory duties. The Federal Administrative Court takes the view that indispensability of this kind can only be affirmed firstly if a legally binding decision on sanctions has been issued, and secondly if a related breach of competition law has been determined. ComCo in contrast took the view that it was not necessary to wait for the decision to become legally binding. In consultation with ComCo, the EAER has filed appeals against two of the three Federal Administrative Court judgments with the Federal Supreme Court. The judgment of the Federal Supreme Court will determine how various inspection requests currently pending before ComCo will be dealt with.

16. Lastly decisions on the publication of Competition Commission rulings were issued in various cases; in most cases, publication was judged to be lawful.

### 3. Legislation

#### 3.1. Parliamentary proposals

17. Following the rejection of the planned reform of the Cartel Act in September 2014, the current situation with parliamentary proposals relating to the Cartel Act that have been submitted but are still pending is as follows:

- The Altherr Parliamentary initiative of 25 September 2014 “Excessive import prices. End compulsory procurement on the domestic market” (14.449), which has been endorsed by the committees of both Councils, has been adjourned until autumn 2019.
- The Hess Motion of 18 June 2015 “For a more effective Cassis de Dijon principle” (15.3631) was rejected by both Councils in March and June 2018 respectively as a result of a report from the Federal Council (17.050).
- The Bischof Motion of 30 September 2016 “Ban adhesion contracts between online booking platforms and the hotel industry” (16.3902) was approved by both Councils; the EAER is expected to draft a related bill by autumn 2019 that will be submitted for consultation.
- The Fournier Motion of 15 December 2016 “Improve the position of SMEs in competition proceedings” (16.4094) demands deadlines for courts, procedural costs for parties, more lenient sanctions for SMEs and the publication of decisions only after they have become legally enforceable. Following its approval by the Council of States, on 5 March 2018 the National Council accepted the first two points and rejected the other two. The EAER is currently drafting a bill that will be submitted for consultation.
- On 8 March 2018, the National Council accepted the National Council Economic Affairs and Taxation Committee Motion of 14 August 2017 “Create an effective instrument to prevent unreasonable periodical prices” (17.3629); the motion has still to be debated in the Council of States.
- The Pfister Interpellation of 14 December 2017 on the “Improper foreclosure of the Swiss motor vehicle market” (17.4151), which relates to parallel and direct imports of vehicles, is being debated in the National Council.
- The Pfister Motion of 27 September 2018 on the “Effective implementation of the Cartel Act in the motor vehicle sector” (18.3898) demands that the Federal Council enact an ordinance to protect consumers and SMEs from practices in the motor vehicle sector that distort competition. The Federal Council has called for the motion to be rejected, but the Councils have yet to consider it.
- The Vogler Interpellation of 28 September 2018 on “Speeding up ComCo proceedings” (18.4058), which relates to the length of time taken to process cases, is being considered by the National Council.
- The Nantermod Motion of 12 December 2018 on “Fair and effective procedures in competition law” (18.4183), which calls for changes to the procedural rules on inspecting files and compulsory fees in preliminary investigations has not yet been considered.
- The Français Motion of 13 December 2018 “The revision of the Cartel Act must take account of both qualitative and quantitative criteria in assessing the illegality of an agreement restricting competition” (18.4282), which calls for an amendment to Art. 5 Cartel Act, has not yet been considered.
- The Bauer Motion of 14 December 2018 on “ComCo investigations: the presumption of innocence must take precedence” (18.4304) demands the repeal of Art. 28 Cartel Act, which provides for the public announcement of the opening of an investigation, naming the parties. It has not yet been considered.

### 3.2. Fair Prices Initiative

18. The Federal Council has drafted an indirect counter-proposal to the Fair Prices Initiative (“Put an end to Switzerland as an island of high prices – for fair prices”), which was submitted in December 2017, and which provides for the introduction of a provision in the Cartel Act on relative market power, but which is limited to preventing misconduct by companies in cross-border competition. Currently the EAER is preparing a report on the consultation procedure which was concluded at the end of November 2018 as well as the dispatch on the Fair Prices Initiative and the Federal Council’s indirect counter-proposal.

### 3.3. Partial Revision of the Cartel Act

19. SECO has overall responsibility for drafting the revision bills on behalf of the administration. The Secretariat is also involved in this work.

## 4. Organisation and Statistics

### 4.1. Annual budget

20. In 2018 ComCo had an overall budget, including personnel, material and investment costs, of 13,1 million Swiss francs respectively 13,1 million US dollars.

### 4.2. Competition Commission and Secretariat

21. In 2018 ComCo held 14 full or half-day plenary sessions. At these meetings it took the decisions on matters related to the Cartel Act and the Internal Market Act. More details of these can be found in the statistics below.

22. The following staff changes took place at ComCo in 2018:

- Andreas Heinemann took over as President from 1 January 2018, as the successor to Vincent Martenet.
- Danièle Wüthrich-Meyer was appointed Vice-President from 1 January 2018.
- Isabel Martínez replaced Daniel Lampart as a member of the Competition Commission from 1 January 2018.
- The Federal Council appointed two new Competition Commission members on 9 March 2018: Clémence Grisel Rapin and Nicolas Diebold. They took office on 1 July and 1 April 2018 respectively.

23. In 2018 the following changes took place in key positions in ComCo Secretariat:

- Rafael Corazza, Director of the Secretariat, retired on 31 July 2018 at the age of 67.
- On 23 May 2018, the Federal Council appointed Patrik Ducrey as the new Director of the Secretariat. The former Deputy Director took up his new post on 1 August 2018.
- On 17 September 2018 ComCo appointed Andrea Graber Cardinaux as Vice Director of the Secretariat. She took up her new post on 1 October 2018.
- Frank Stüssi took over the role of Head of Communications from 1 October 2018 and on 14 December 2018 was promoted by the Federal Council from Vice Director to Deputy Director from 1 January 2019.

24. Rafael Corazza certainly made his mark in the twelve years he served as Director of the Secretariat. He studied at the University of St Gallen (HSG) and the University of Madrid. He graduated in 1976 with a degree in economics from the HSG and obtained a doctorate there in 1985. He completed traineeships in companies in the private sector and was also an assistant at the Institute of Economics at the HSG. During his studies, he worked as an independent consultant. Rafael Corazza joined the Federal Administration in 1984 as secretary to the Cartels Commission and worked from 1987 to 2006 at the Office of the Price Commissioner, initially as deputy director and director and ultimately as Deputy Price Commissioner. On 9 June 2006, the Federal Council appointed him Director of the Secretariat from 1 October 2006.

25. During his period in office, ComCo reached a series of landmark decisions. Numerous important projects were carried out and developments achieved during his term of office. Rafael Corazza was also the member of various panels of experts. Two defining projects are worth highlighting: the evaluation of the Cartel Act, with the work that arose from that project, and screening as a statistical method for detecting agreements affecting competition.

26. He had only just assumed office when the Head of the then Federal Department of Economic Affairs (FDEA, now the EAER) at the time, Federal Councillor Doris Leuthard, mandated him in winter 2006/2007 with the evaluation of the Cartel Act. Under Art. 59a of the revised Cartel Act, the Federal Council was responsible for evaluating the effectiveness of the measures and the enforcement of the Cartel Act, reporting to Parliament and submitting proposals for further action. Rafael Corazza set up and chaired a broadly-based Cartel Act evaluation group to carry out this comprehensive task. The evaluation of the Cartel Act included a consolidated report based on 15 reports and studies (around 1,000 pages of documentation in total). The consolidated report contained an assessment of the effects and effectiveness of the Cartel Act at the time, highlighted any need for action and concluded with a series of recommendations to Parliament and the executive (Federal Council, FDEA, ComCo and its Secretariat).

27. The recommendations made to ComCo and its Secretariat led to ComCo's reorganisation and numerous organisational developments. ComCo opted for a presidency model, in which five entities at Commission level (Presidency, three chambers, plenary session) were replaced by two (Presidency, plenary session), thus reducing the work involved in allocating and separating responsibilities, exchanging information and coordinating tasks. In four working groups (commission work, management in the Secretariat, core processes, and IT), ComCo and the Secretariat devise various measures to improve ComCo's decision-making processes, its efficiency and management, the Secretariat's process orientation and to improve coordination between the Commission and the Secretariat.

28. The recommendations made to Parliament and to the then FDEA also led to wide-ranging legislative work and consultations. Even though the revised legislation ultimately failed to receive Parliament's approval, the work involved formed the basis for the ongoing discussions and the reform efforts that began again later.

29. A second focus of Rafael Corazza's work was developing an instrument for the active statistical exposure of unlawful agreements. Every week, ComCo and its Secretariat receive a range of reports and complaints about potential infringements of competition law, which they consistently follow up. The question that Rafael Corazza nevertheless raised and to which he demanded an answer was whether cartels can be actively uncovered by data analysis. His main aim was to increase the deterrent effect of

the Cartel Act. As combating price fixing in public procurement had been a ComCo priority since 2008, Rafael Corazza began the pilot project on screening. Its aim was to analyse data on tendering procedures and to develop statistical methods that would highlight irregularities in the bidding process. He assigned this task to a team of employees, requested the cantons to provide data on tendering procedures and pressed ahead with the work that eventually led to a screening tool.

30. The statistical analysis of data requires a thorough understanding of market structures and above all data on the bidding behaviour of companies in tendering procedures. Obtaining data itself proved to be a sticking point. After the Canton of St Gallen made data available on tendering procedures, the Secretariat developed a statistical method that identified irregularities in agreements affecting competition during the procurement process. Two financial ratios were the key: the coefficient of variation and the relative similarity measure.

31. The development of the screening tool and the related statistical analysis of data on bids from the Canton of St. Gallen led in April 2013 to an investigation being opened into agreements in the road construction and civil engineering sector in the See-Gaster region, in which ComCo uncovered hundreds of price-fixing agreements in July 2016. With the conclusion of this investigation and the successful application of the screening tool, an important milestone was reached: the statistical analysis of data can be actively used to detect cartels. The effectiveness of the analysis generated international interest in the screening tool, from other competition authorities, the OECD and from major procurement offices. Thanks to Rafael Corazza's tireless commitment, the Secretariat garnered international esteem in the fight against bid rigging.

32. Rafael Corazza ran the ComCo Secretariat with enthusiasm and foresight. He knew how to motivate his staff and always appreciated their work. He worked tirelessly, without seeking the limelight. Instead, he always highlighted the work of others and allowed them to reap the praise they were due. He concentrated on making progress with his projects, using his staff in a targeted manner and helping to develop the authority. During his 12 years in office, Rafael Corazza saw the competition authorities prosper and contributed decisively to developing the application of the Cartel Act. We will continue to build on the excellent foundations he has laid. We wish to express our heartfelt thanks to Rafael Corazza.

### 4.3. Statistics

33. At the end of 2018, the Secretariat employed 68 (previous year 72) staff members, 39.70 per cent of whom were women (previous year 43%). The 68 employees include both full-time and part-time staff representing a total of 58.1 (previous year 60.9) full-time positions. The number of employees involved in matters relating to the application of the Cartel and Internal Market Acts (including the executive board) is 51 (previous year 53), corresponding to 44.3 full-time positions (previous year 46.1). Twelve employees (previous year 14) work in the Resources and Logistics Division, providing support for all ComCo's work; this corresponds to 8.8 (previous year 9.8) full-time positions. The Secretariat also offers 5 (previous year 5) internships. These 5 interns work full-time.

34. The statistics on the work carried out by ComCo and its Secretariat in 2018 are set out below:

Table 1.

	2018	2017
<b>Investigations</b>		
Conducted during the year	24	30
Carried forward from previous year	18	26
Investigations opened	6	4
New investigations from divided investigations	0	0
Final decisions	4	12
Amicable settlements	2	2
Administrative rulings	2	4
Sanctions under Art. 49a para. 1 Cartel Act	4	11
Part-rulings	0	0
Procedural rulings	0	1
Other rulings (publications, costs, searches, etc.)	2	3
Precautionary measures	0	1
Sanctions proceedings under Art. 50 ff. Cartel Act	0	0
<b>Preliminary investigations</b>		
Conducted during the year	15	18
Carried forward from previous year	10	9
Opened	5	9
Concluded	7	7
Investigations opened	2	1
Modification of conduct	3	3
No consequences	2	3
<b>Other activities</b>		
Notifications under Art. 49a para. 3 let. a Cartel Act	2	2
Advice	21	21
Market monitoring	72	63
Freedom of information applications	20	9
Other enquiries	581	635
<b>Mergers</b>		
Notifications	34	32
No objection after preliminary investigation	27	27
Investigations	3	3
Decisions of ComCo after investigation	3	3
Authorisation refused	0	1
Authorised with conditions/requirements	0	0
Authorised without reservations	3	2
Early implementation	0	0
<b>Appeal proceedings</b>		
Total number of appeals before the Federal Administrative Court and Federal Supreme Court	37	31
Judgments of the Federal Administrative Court	7	7
Success for the competition authority	5	5
Partial success	1	1
Unsuccessful	1	1
Judgments of the Federal Supreme Court	1	2
Success for the competition authority	0	2
Partial success	1	0
Pending at the end of the year (before Federal Administrative Court and Federal Supreme Court)	33	21
<b>Expert reports, recommendations and opinions etc.</b>		
Expert reports (Art. 15 Cartel Act)	0	1

Recommendations (Art. 45 Cartel Act)	0	0
Expert opinions (Art. 47 Cartel Act, 5 para. 4 PMA or 11a TCA)	2	3
Follow-up checks	0	0
Notices (Art. 6 Cartel Act)	0	1
Opinions (Art. 46 para. 1 Cartel Act)	152	210
Consultation proceedings (Art. 46 para. 2 Cartel Act)	8	8
<b>IMA</b>		
Recommendations / Investigations (Art. 8 IMA)	0	1
Expert reports (Art. 10 IMA)	3	5
Explanatory reports (Secretariat)	94	73
Appeals (Art. 9 para. 2 <sup>bis</sup> IMA)	0	0

35. A glance at the statistics for 2018 and a comparison with the figures from 2017 reveal the following:

- In 2018, fewer final decisions were taken than in the previous year. This is because seven of the twelve final decisions taken in 2017 related to bid rigging in the canton of Graubünden, and relate to matters that originally formed part of a larger investigation which was divided into ten separate investigations in the course of the proceedings. In view of this, ComCo also imposed fewer sanctions under Art. 49a para. 1 Cartel Act in 2018 than in the previous year.
- The Secretariat conducted a similar number of preliminary investigations in 2018 to the previous year.
- In 2018, ComCo received notification of a similar number of merger procedures to 2017. Likewise, in 2018 ComCo approved the same number of mergers after the preliminary examination and a similar number following a detailed examination as in the previous year. On the other hand, in 2018 ComCo did not prohibit any mergers.
- The number of appeals pending before the courts increased in 2018 when compared with 2017.
- The Secretariat concluded more market monitoring procedures in 2018 than in the previous year. In particular the Product Markets Division assessed a large number of complaints as part of market monitoring procedures, for example on the issue of “Switzerland as an island of high prices” and in the automotive sector.
- In 2018, the Secretariat had to provide more guidance on the IMA than in the previous year. This was mainly due to the large number of enquiries received from skilled-trades businesses in connection with the LIA. The three expert opinions on the IMA were all submissions in appeal proceedings before the Federal Supreme Court.